

No. 10695

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United States  
Circuit Court of Appeals

*Vol 2386*

For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

HOLTVILLE ICE AND COLD STORAGE COM-  
PANY, ASSOCIATED FARMERS OF IM-  
PERIAL COUNTY and HUGH T. OS-  
BORNE,

Respondents.

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Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 390

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Upon Petition for Enforcement of an Order of the National  
Labor Relations Board

FILED

MAY 23 1944



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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-A

United States of America  
Before the National Labor Relations Board  
21st Region

Case No. XXI C 1985

Date Filed 12/18/42

In the Matter of

HOLTVILLE ICE AND COLD STORAGE CO.,  
ASSOCIATED FARMERS OF IMPERIAL  
COUNTY: and HUGH T. OSBORNE

and

CHAUFFEURS, TEAMSTERS AND HELPERS  
LOCAL 898, AFL

THIRD AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Holtville Ice and Cold Storage Co.: at Holtville, Cal. Associated Farmers of Imperial County; El Centro, Cal. Hugh T. Osborne, El Centro, Cal. employing approximately 22 workers in refrigeration has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (2), (3) and (5) of said Act, in that the above named respondents and each of them since on or about September 15, 1941, and at all times thereafter, engaged in activities to interfere with, coerce and restrain employees of Holtville Ice and Cold



Storage Company and the right to self organize, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining, or other mutual aid or protection.

On or about September 15, 1941, said respondents and each of them did sponsor, form and encourage the formation of a labor organization, namely Holtville Ice and Cold Storage Company Employees Association among employees of Holtville Ice and Cold Storage Company and have at all times since the formation of said organization, dominated and interfered with the administration of said organization, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

On or about the dates set opposite their names Holtville Ice and Cold Storage Company aided, assisted, and abetted by Associated Farmers of Imperial County and Hugh T. Osborne did discharge because of their union activities the following named persons and have at all times since said dates of discharge refused to reinstate and employ said persons.

Arthur Standifer, discharged October 3, 1941

Lester C. Hart, discharged October 16, 1941

L. H. Davis, discharged October 19, 1941

H. C. Fredenburg, discharged October 22, 1941

Perry T. Blankenship, discharged November 7,  
1941

Herman T. Pool, discharged November 17, 1941



**Herman Fruhn**, refused reinstatement November 3, 1941

By the discharge of the aforementioned persons and each of them, and by their refusal to reinstate and employ the aforementioned persons, Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne and each of them, have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

Respondent, Holtville Ice and Cold Storage Company aided, abetted, assisted and encouraged by Associated Farmers of Imperial County and Hugh T. Osborne, has at all times since on or about October 12, 1941, refused and failed to bargain collectively with the duly designated representative of its employees within an appropriate unit, namely, Chauffeurs, Teamsters and Helpers Local 898, AFL, in regard to wages, hours of employment, rates of pay, and other conditions of employment. By the aforesaid acts and each of them, Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, and each of them, did engage in and are engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

By the above acts and each of them, Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, and each of them have engaged in and are engaging in unfair

labor practices within the meaning of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

CHAUFFEURS, TEAMSTERS  
AND HELPERS LOCAL 898,  
AFL

By: ED ACKSTETTER, Secty. Treas.  
Labor Temple, 795 Main St.,  
El Centro, Calif. Phone: 96

Subscribed and sworn to before me this 18th day  
of December, 1942, at Los Angeles, California.

CHARLES M. RYAN

Attorney 21st Region National  
Labor Relations Board

2 Copies Sent to the Board 12/18/42

---

BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

### COMPLAINT

It having been charged by Chauffeurs, Teamsters and Helpers, Local 898, affiliated with the American Federation of Labor, that Holtville Ice and Cold

Storage Company, hereinafter called Respondent Ice Company, and Associated Farmers of Imperial County, hereinafter called Respondent Associated Farmers, and Hugh T. Osborne, hereinafter called Respondent Osborne, said Respondents being hereinafter collectively called Respondents, have individually and collectively engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, by the Regional Director of the Twenty-first Region, designated as agent of said National Labor Relations Board, by its Rules and Regulations—Series 2, as amended, hereby issues its Complaint and alleges the following:

1. (a) Respondent Ice Company is, and at all times hereinafter referred to, has been, a corporation organized and existing under and by virtue of the laws of the State of California.

(b) Respondent Associated Farmers is, and at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office in the City of El Centro, State of California.

(c) Respondent Osborne, an individual, is, and at all times hereinafter referred to, has been, secretary and manager of Respondent Associated Farmers. Respondent Osborne resides in the City of El Centro, State of California.

(d) Respondent Ice Company is, and at all times hereinafter referred to, has been, a member of and a contributor to Respondent Associated Farmers.

(e) Respondent Associated Farmers and Respondent Osborne are, and at all times herein-mentioned, have been, acting directly and indirectly on behalf of and in the interest of Respondent Ice Company, and said Respondent Associated Farmers and Respondent Osborne are employers within the meaning of Section 2, subsection (2) of the Act.

2. Respondent Ice Company has its principal office and place of business in the City of Holtville, State of California, where it is engaged in the production, sale and distribution of ice.

3. Respondent Ice Company, in the course and conduct of its aforesaid business, causes and has continuously caused large quantities of materials to be purchased and obtained, shipped and transported in interstate and foreign commerce from and through States of the United States other than the State of California to Respondent Ice Company's place of business in Holtville, California.

4. Respondent Ice Company, in the course and conduct of its aforesaid business, causes and has continuously caused large quantities of ice produced by it to be sold, shipped and transported in interstate and foreign commerce from Respondent Ice Company's place of business in Holtville, California, to, into and through States of the United States other than the State of California and into foreign coun-



tries. Respondent Ice Company, in the course and conduct of its business, supplies large quantities of ice which are used in preparing, icing, cooling, and preserving vegetables and other products being shipped from Holtville, California and vicinity to, into, and through States of the United States other than California and into foreign countries.

5. (a) Chauffeurs, Teamsters and Helpers, Local 898, affiliated with the American Federation of Labor, hereinafter called the Union, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

(b) Holtville Ice and Cold Storage Company Employees Association, hereinafter referred to as the Association, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. Respondent Ice Company, while engaged at its place of business in Holtville, California, Respondent Associated Farmers and Respondent Osborne, jointly and separately, acting through their officers, agents, and employees, including without limitation, F. A. Willard, Herman Smith, Pete Pool, George R. Harlan, Hugh T. Osborne, and G. G. Bennett, did seek to discourage and did thereby discourage membership of Respondent Ice Company's employees in and their affiliation with the Union by making statements to said employees condemning unions as rackets and union members as racketeers and Communists; by advising said employees that it would do them no good to belong to a union; by stating to said employees that Holtville Ice and Cold Storage Company would never recognize the Union; by

threatening said employees with discharge if they joined or remained members of a union; by advising said employees to refrain from union activities; by questioning employees regarding their union activities.

7. Respondent Ice Company, while engaged at its place of business in Holtville, California, as described in paragraphs 2, 3 and 4 above, Respondent Associated Farmers and Respondent Osborne, jointly and separately, acting through their officers, agents and employees, including without limitation, F. A. Willard, Herman Smith, Pete Pool, George R. Harlan, Hugh T. Osborne, and G. G. Bennett, did, on or about September 15, 1941, sponsor, promote, encourage, assist and interfere with the formation of the Association, and has at all times since that date dominated and interfered with the administration of said Association and contributed support thereto, and has coerced and encouraged the aforesaid employees to accept said Association as their representative for the purpose of collective bargaining with Respondent Ice Company, in respect to rates of pay, wages, hours of employment and other conditions of employment.

8. By the acts, and each of them, as set forth in paragraph 7 above, Respondents, and each of them, have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

9. Respondent Ice Company, while engaged at its place of business in Holtville, California, as described in paragraphs 2, 3 and 4 above, Respondent

Associated Farmers, and Respondent Osborne, jointly and separately, acting through their officers, agents and employees, including without limitation F. A. Willard, Herman Smith, Pete Pool, George R. Harlan, Hugh T. Osborne and G. G. Bennett, did on or about the dates set opposite their names, discharge the following named employees of Respondent Ice Company, and each of them:

Arthur Standifer	October 3, 1941
Lester C. Hart	October 16, 1941
L. H. Davis	October 19, 1941
H. C. Fredenburg	October 22, 1941
Perry T. Blankenship	November 7, 1941
Herman T. Pool	November 17, 1941
Herman Fruhn	November 3, 1941

and has at all times since said dates of discharge, refused and failed to reinstate and employ the aforementioned persons, and each of them. Respondents discharged and refused and failed to reinstate and employ the aforesaid persons, and each of them, because they joined and assisted the Union and engaged in concerted activities for their mutual aid and protection.

10. By the acts, and each of them, as set forth in paragraph 9 above, Respondents, and each of them, did discriminate in regard to hire and tenure of employment of the employees named in paragraph 9 above, and did discourage, and are discouraging, membership in the Union, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

11. A unit for the purpose of collective bargaining composed of all employees, exclusive of supervisory and clerical employees, of Respondent Ice Company, would insure to said employees the full benefit of the right to self-organization and would otherwise effectuate the policies of the Act, and is therefore a unit appropriate for the purposes of collective bargaining.

12. Prior to October 12, 1941, and at all times thereafter, a majority of the employees in the unit set forth in paragraph 11 above, did designate the Union as their representative for the purpose of collective bargaining with Respondent Ice Company. By virtue of the aforesaid designation, the Union is and has been at all times since on or about October 12, 1941, the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining with Respondent Ice Company in respect to wages, rates of pay, hours of employment and other conditions of employment.

13. On or about October 12, 1941, and on other subsequent dates, the Union requested the Respondent Ice Company, through its officers, agents, and employees, to bargain collectively in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment with the Union as the exclusive representative of all the employees in the aforesaid unit. On the aforesaid dates and at all times thereafter up to and including the date of this complaint, Respondent Ice Company, while engaged at its place of business in Holtville, California, as described in paragraphs 2, 3, and 4 above, Respond-



ent Associated Farmers and Respondent Osborne, jointly and separately, acting through their officers, agents, and employees, did refuse and fail to do now refuse and fail to bargain collectively in good faith in respect to rates of pay, wages, hours of employment and other conditions of employment with the Union as the exclusive representative of the employees in the Unit set forth in paragraph 12 above.

14. Respondents, and each of them, by refusing and failing to bargain collectively with the Union as described in paragraph 13 above, have engaged in and are engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

15. Respondents, and each of them, by the acts and each of them set forth in paragraphs 6, 7, 9 and 13 above, did interfere with, coerce and restrain, and are interfering with, coercing and restraining employees of Respondent Ice Company in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

16. The aforesaid acts of Respondents, set forth in paragraphs 6, 7, 9 and 13 above, constitute unfair labor practices affecting commerce within the meaning of Section 8 subsections (1), (2), (3) and (5) and Section 2, subsections (6) and (7) of the Act.

17. The aforesaid acts of Respondents, referred to in paragraphs 6, 7, 9 and 13 above, occurring in connection with the operations of Respondent Ice Company as described in paragraphs 2, 3 and 4 above, have a close, intimate and substantial relation

to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 30th day of December, 1942, issues its Complaint against Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne, Respondents herein.

[Seal]

E. J. EAGEN, Director

National Labor Relations  
Board Twenty-first Region

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### BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

### NOTICE OF HEARING

Please Take Notice that on the 18th day of January, 1943, at 10:30 A.M., in Room "A" in the Barbara Worth Hotel, in El Centro, California a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the Regional Director for the 21st Re-

gion, with offices at 808 U.S. Post Office and Court House, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint, within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on this 30th day of December, 1942.

[Seal]

ELWYN J. EAGEN,

Regional Director. National  
Labor Relations Board.

---

BOARD'S EXHIBIT No. 1-D

[Title of Board and Cause.]

AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 31st day of December 1942, I served by postpaid registered mail, bearing Government frank, a copy of Complaint, Notice of Hear-

ing and Third Amended Charge to the following named persons, addressed to them at the following addresses:

Holtville Ice and Cold Storage Co.

Holtville

California

Associated Farmers of Imperial County

Holtville

California

Mr. Hugh T. Osborne

El Centro, California

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

MARION C. RIEMER

Subscribed and sworn to before me this 31st day  
of December 1942.

MARION ANDERSON

Designated Agent

---

BOARD'S EXHIBIT No. 1-F

December 31, 1942

Holtville Ice and Cold Storage Co.

Holtville

California

Re: Holtville Ice and Cold Storage Co.,  
et al., Case XXI-C-1985

Gentlemen:

This is to call your attention to a typographical

error in the Complaint heretofore issued in the above-named case. On page 6, paragraph 14, second line, "paragraph 3 above" should read "paragraph 13 above." This correction is being made in the original of the Complaint. Will you please make a similar correction in the copy which was served on you.

Very truly yours,

E. J. EAGEN, Director

Twenty-first Region

Same letter to:

Associated Farmers of Imperial County  
Holtville, California

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro, California

Robert B. Whitelaw, Esq.

111 North Sixth St.

El Centro., Cal.

Clarence B. Smith, Esq.

212 Rehkopf Bldg.

Holtville, Calif.



## BOARD'S EXHIBIT No. 1-G

[Title of Board and Cause.]

## AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 31st day of December 1942, I served by postpaid registered mail, bearing Government frank, a copy of letter setting out correction in Complaint to the following named persons, addressed to them at the following addresses:

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro

California

Associated Farmers of Imperial County

Holtville

California

Holtville Ice and Cold Storage Co.

Holtville

California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 1st day  
of Jan. 1943

MARION ANDERSON

Designated Agent.

BOARD'S EXHIBIT No. 1-I

[Title of Board and Cause.]

ORDER AND NOTICE OF CONTINUANCE

This matter having come before Elwyn J. Eagen, Director for the National Labor Relations Board, Twenty-first Region, upon request of R. B. Whitelaw, Attorney for Associated Farmers of Imperial County and Hugh T. Osborne, for continuance of the hearing in this matter;

And said request being duly considered and a continuance of the hearing herein appearing to be necessary and proper;

It Is Hereby Ordered that the hearing herein, heretofore scheduled to begin on the 18th day of January, 1943, shall be and it hereby is continued to January 25, 1943, on which date the hearing shall be held at 10:30 A.M. at the place stated in the Notice of Hearing heretofore issued herein.

Dated: At Los Angeles, California, this 5th day of January, 1943.

[Seal]

ELWYN J. EAGEN, Director  
National Labor Relations  
Board 21st Region

## BOARD'S EXHIBIT No. 1-J

[Title of Board and Cause.]

## AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss.

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 6th day of January, 1943, I served by postpaid registered mail, bearing Government frank, a copy of Order and Notice of Continuance to the following named persons, addressed to them at the following addresses:

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro, California

Associated Farmers of Imperial County

El Centro, California

Holtville Ice and Cold Storage Co.

Holtville, California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 6th day of Jan. 1943.

MARION ANDERSON



BOARD'S EXHIBIT No. 1-L

[Title of Board and Cause.]

AMENDMENT TO THE COMPLAINT

Now comes the National Labor Relations Board by the Regional Director of the Twenty-first Region and issues an Amendment to the Complaint in this cause as follows:

1. Insert following paragraph 6 of said Complaint the following paragraph:

6(a) The acts alleged in paragraph 6, above, occurred repeatedly from day to day beginning on or about September 1, 1941, and continuing up to and including the date of this Complaint.

Wherefore the Regional Director for the National Labor Relations Board for the Twenty-first Region issues this Amendment to the Complaint in the above-entitled cause.

Dated this 8th day of January, 1943.

[Seal] E. J. EAGEN

Director, 21st Region  
National Labor Relations  
Board  
808 U. S. Post Office and  
Courthouse  
Los Angeles, California

## BOARD'S EXHIBIT No. 1-M

[Title of Board and Cause.]

## AFFIDAVIT AS TO SERVICE

State of California

County of Los Angeles—ss:

I, Marion Riemer, being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 21st Region at Los Angeles, California, on the 8th day of January 1943, I served by postpaid registered mail, bearing Government frank, a copy of Amendment to the Complaint and covering letter to the following named persons, addressed to them at the following addresses:

Chauffeurs, Teamsters and Helpers

Local 898, AFL

Labor Temple, 795 Main St.

El Centro, California

Mr. Hugh T. Osborne

El Centro, California

Associated Farmers of Imperial County

El Centro, California

Holtville Ice and Cold Storage Co.

Holtville, California

MARION RIEMER

Marion Riemer

Subscribed and sworn to before me this 8 day  
of January, 1943.

MARION ANDERSON

BOARD'S EXHIBIT No. 1-R

[Title of Board and Cause.]

ANSWER

Comes now the respondents, Associated Farmers of Imperial County, and Hugh T. Osborne, individually and as secretary-treasurer of the Associated Farmers of Imperial County, and G. G. Bennett, and in answer to the complaint on file herein admits, denies, alleges as follows:

1. Admit Sub-divisions a, b, c, d of Paragraph No. 1, but denies each and every part and every allegation contained in sub-division (e) of said paragraph No. 1.

2. Admit Paragraph No. 2.

3. These respondents have no information and beliefs sufficient to answer allegations contained in Paragraphs No. 3 and 4, and sub-division (a) of Paragraph No. 5, and placing their denial on that ground deny each and every allegation and every part therein contained, but these respondents admit the allegations contained in sub-division (b) of Paragraph No. 5.

4. These respondents deny each and every allegation and every part contained in Paragraph No. 6 of said complaint.

5. Deny each and every allegation and every part contained in Paragraph No. 7, except that respondent, Hugh T. Osborne, admits that he advised with the Association and on request of members of said Association, but that he did not sponsor, promote, or encourage or interfere with the formation of the

Association nor has he at any time since the formation of the Association, had anything whatsoever to do with the Association or its affairs, nor has he or any of the respondents contributed to the Association nor in any wise coerced or encouraged the employees to accept the said Association as their representative for the purpose of collective bargaining with the respondent Ice Company, with respect to rates of pay, wages, hours of employment or conditions of employment.

6. These respondents deny each and every allegation and every part contained in Paragraph No. 8.

7. These respondents deny each and every allegation and every part contained in Paragraph No. 9, and further allege that these respondents had no power, authority, or direction, either directly or indirectly, with the hiring or discharging of any of the employees of the respondent Ice Company or of any of the particular employees, whose names are set forth in Paragraph No. 9 and further allege that these respondents had no knowledge or information concerning the employees who were alleged to have been discharged, nor that said employees at any time asked for reinstatement, and further allege that they have no power, authority, or direction for reinstatement, either directly or indirectly of said employees.

8. These respondents deny each and every allegation and every part therein contained in Paragraph No. 10 in said complaint and said Hugh T. Osborne specifically alleges that he at no time discouraged or is he still discouraging membership in



the Union either directly or indirectly and that neither he or any of the other respondents, individually or collectively, engaged in or are either or any of them engaging in practices within the meaning of Section 8, subsection (3) of the Act.

9. These respondents are unable to answer the allegation contained in Paragraph No. 11 in as much as said Paragraph is so uncertain, unintelligible, and ambiguous to evade answer but do not admit any of the implications which may arise by reason of said uncertain, unintelligible, and ambiguous allegations.

10. These respondents have no information or beliefs sufficient to answer any of the allegations contained in Paragraphs No. 12 and 13 and place their denial on that ground, denying each and every allegation and every part therein contained.

11. These respondents and each of them deny that they have ever refused or failed to bargain collectively with the Union described in Paragraph No. 3 individually or otherwise or have any of them ever engaged in or are now engaged in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

12. Deny that these respondents or any of them by any of the alleged acts set forth in Paragraphs No. 6, 7, 9, and 13 in the complaint, or otherwise, or ever at all interfered with, coerced, or restrained, or are interfering, coercing, or restraining any of the employees of the respondent Ice Company in the exercise of any rights to which they may be guaranteed by reason of Section 7 of the Act, nor

have any of these respondents engaged in or now are engaging in any unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

13. These respondents deny that the alleged acts of either or any of them is set forth and herein specifically denied the Paragraphs No. 6, 7, 9, and 13 of said complaint constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (2), (3), and (5) or any of them and Section 2, subsections (6) and (7) or either of them.

14. These respondents deny that the acts referred to in Paragraphs No. 6, 7, 9, and 13 of said complaint are the acts of these respondents; that they occurred in connection with the operation of the respondent Ice Company as described in Paragraphs No. 2, 3, and 4, or any of them, have a clause, intimate and substantial, or intimate or substantial relation to trade, traffic and commerce in the several states, nor do they tend to lead to labor disputes burdening and/or obstructing commerce, and/or the free flow of commerce.

These respondents further answering said complaint and with particularity to the amendment of the complaint, being Paragraph No. 6, subsection (a) and deny that any acts as alleged in Paragraph No. 6 in said complaint occurred repeatedly or at all from day to day either beginning on September 1, 1941 or ever at all, or that they are continuing up to and including the date of this complaint or continuing at all.

Respondents further answering complaint and as



further, second, and separate defense allege:

1. That both the charge and the matters set forth and described in said complaint are barred by the statutes in that the same was not brought within one year from the alleged occurrence and alleged violations of the National Labor Relations Act;

Wherefore, these respondents pray that said proceedings be dismissed against said respondents or that the said Board find and determine that said respondents committed no acts constituting a violation of any part or portion of the National Labor Relations Act.

Dated this 20th day of January, 1943.

HUGH T. OSBORNE

For Holtville Ice and Cold Storage  
Company: Associated  
Farmers of Imperial County,  
and Hugh T. Osborne

Whitelaw & Whitelaw

By R. B. Whitelaw

Attorneys for Respondents

State of California

County of Imperial—ss.

H. T. Osborne being first duly sworn, deposes and says: That he is one of the respondents in the above entitled action, that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and

belief and as to those matters he believes it to be true.

H. T. OSBORNE

Subscribed and sworn to before me this 19th day of January, 1943.

[Seal] MARY V. JONES

Notary Public in and for said County and State.

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BOARD'S EXHIBIT No. 1-S

[Title of Board and Cause.]

ANSWER OF RESPONDENT, HOLTVILLE  
ICE AND COLD STORAGE COMPANY

Comes now Holtville Ice and Cold Storage Company, F. A. Willard, Herman Smith and Pete Pool, who in answer to the complaint in the above matter admit, deny and allege as follows:

I.

Admit the allegations contained in paragraphs 1(a), 1(b), 1(c), and 1(d). Deny the allegations of paragraph 1(e) except it is admitted that the respondent Ice company is an employer.

II.

Admit the allegations of paragraph 2.

III.

Deny the allegations of paragraph 3.

## IV.

These answering defendants deny the allegations of paragraph 4 and allege the fact to be that the respondent Ice Company manufactures ice at Holtville, Imperial County, California, and that all of said ice so produced is by it sold and delivered to the purchasers in Imperial County, California, and not elsewhere. And this respondent has no information or belief as to whether the ice manufactured by it does eventually go through other states of the United States other than California or into foreign countries and further alleges that it is informed that many of the packed cars of vegetables which have used ice from respondent company are sold two or three times locally before ever being shipped from Imperial County, California. That respondent Ice Company has no interest in the destination of said cars and keeps no record of where said cars go, but does allege that it sells all of its product to local packers and receives payment from said packers locally and makes no deliveries of ice other than in Imperial County, California, and that said ice was and is manufactured with the expectation and intention that the same will be sold within the state of manufacture and if the same is thereafter sold or used in interstate shipments by the purchasers thereof, that it is without the manufacturers knowledge.

## V.

Admit the allegations contained in paragraphs 5(a) and 5(b).

## VI.

These answering respondents deny generally and specifically each and every allegation and statement contained in paragraph 6 of the complaint. And as a further answer, F. A. Willard, as president and manager of respondent Ice Company, alleges that he informed the employees that it was entirely up to them whether they desired to join a union or not. He further alleges that he sent word to said employees that he was not permitted to discuss this matter with the employees and that they could join any union that they desired to join or form any union they desired to form, that it was a subject upon which he could not advise.

## VI(a)

Deny generally and specifically all of the allegations contained in paragraph numbered 6(a) which was filed as an amendment to the complaint.

## VII.

These answering respondents deny generally and specifically each and every allegation and statement contained in paragraph numbered 7 of the complaint.

## VIII.

These answering respondents deny generally and specifically each and every allegation and statement contained in paragraph numbered 8 of the complaint.

## IX.

These answering respondents deny each and every allegation and statement contained in paragraph

numbered 9 and allege the true facts to be as follows:

That the six men named in the complaint were laid off temporarily for the reason that the respondent Ice Company had, previous to the summer of 1941, produced its own power with diesel engines and that during the summer of 1941 the plant was changed over so as to operate with electricity and that due to said change of power the plant could be operated with less employees. That the principal business of the respondent Ice Company was the manufacture of what is known as vegetable ice, which was and is used in the packing of fruits and vegetables. That more than ninety per cent of the sales of ice of the plant were made between the months of December and June, during the lettuce and carrot shipping seasons. That the only business of the said Ice Company during the months of July, August, September, October, and November was the selling of a small amount of clear ice for domestic purposes. That it was the custom of the company each year prior to 1941 to lay men off some time after the end of the vegetable shipping season in June, and although it was also the custom of said company and had been for many years, to retain as many employees as possible during the summer and fall months doing maintenance and repair work in preparation for the coming vegetable season which would commence in the middle or latter part of December of each year. That is stated above, in the summer of 1941, after the completion of the carrot shipping season, a change-over was



made at the plant and electric power was installed. As many of the employees of the company who could be used in any capacity and who had been working during the shipping season were kept busy during the summer and early fall doing maintenance and repair work and that as their jobs were completed various employees were laid off but were not discharged and the six men named in paragraph 9 of the complaint were temporarily laid off because the plant was not operating and the repair and maintenance work had been completed.

That the employee Arthur Standifer was laid off on October 3, 1941. That during the time the plant was in operation said employee worked as a can puller, an operation necessary in the manufacture of ice, and that after the plant finished the shipping season in June, he was used for general maintenance work and repair work incidental to changing the plant over from diesel power to electric power. That the work which he was doing was completed on October 3, 1941. Said employee was laid off for the reason that there was no work at the plant for him until the company started to manufacture ice in the following December. That said employee never did apply for reinstatement.

The employee Lester C. Hart had been employed by the respondent Ice Company as a repairman used almost exclusively to repair the diesel engine equipment. That he was used around the plant for maintenance work after the close of the shipping season



in June and until September 30, 1941, in doing mechanical work incidental to the change-over from diesel power to electric power. That after said work was completed, his services were not required as the electric plant did not require the services of a repair mechanic. That no employee has ever been employed to take his place and that the only reason that he was laid off was because the services of a repair mechanic were no longer needed by the respondent Ice Company while said company was using electric power.

The employee L. H. Davis was laid off on October 19, 1941, but was paid regular salary until October 31, 1941. That F. A. Willard, as president and manager of respondent Ice Company, had decided one year previous to October 1, 1941, to discontinue the services of said L. H. Davis, and that the said F. A. Willard had instructed his office manager Herman Smith to discontinue the employment of the said L. H. Davis at the end of the shipping season in June of 1941 for the reason that there was practically no work for him to do after the close of the shipping season in June of each year and until the commencement of the new season in December. That the said F. A. Willard was away from Imperial County between June and late in September of 1941 and did not know until he returned late in September of 1941 that his instructions had not been carried out. That he again suggested to Herman Smith, his office manager, that there was practically no work to be done by the said L. H. Davis until the coming shipping season. That neither

respondent Ice Company, F. A. Willard, nor Herman Smith knew prior to the time the said L. H. Davis was laid off on October 19, 1941, that he had joined a union or become affiliated with any union and that said fact did not in any way enter into the discontinuance of his services.

That the employee H. C. Fredenburg was temporarily laid off on October 1, 1941, and thereafter worked one day late in the month of October, 1941. That said employee had previously been employed as a truck driver delivering vegetable ice to the various shipping sheds in Holtville during the lettuce and carrot shipping seasons. That after the sheds closed in June of 1941 said employee was used to do some delivering of clear ice for domestic purposes. That the clear ice business was practically nil on October 22, 1941, and the vegetable ice business would not commence until the middle of December, 1941. That said employee had also been used some in doing repair work on the diesel engines and since the diesel engines had been removed and electric power installed and there was no delivery work for him to do on October 22, 1941, he was laid off for said reasons only, and that he never did apply for reinstatement and undoubtedly would have been reinstated had he applied at the commencement of the vegetable shipping season.

That the employee Perry T. Blankenship had, prior to September 27, 1941, worked on the platform, in the storeroom, in the tank room, and in the engine room. That after the completion of the

vegetable shipping season in June of 1941 said employee was used for maintenance and repair work until September 27, 1941, when he completed the particular job he was doing. That the plant was not, at the time, manufacturing vegetable ice and that the sales of clear ice for domestic purposes were practically nil and that the company had no work for said employee at the time he was laid off. That said employee never did apply for reinstatement and undoubtedly would have been re-employed had he applied at the commencement of the following shipping season in some capacity although his services would not be required in the engine room as said work had been discontinued because of the change-over to electric power.

That the employee Herman T. Pool was laid off by his brother Pete Pool who was, on September 30, 1941, a plant foreman. That there was a feeling among some of the employees that the said Pete Pool, foreman, favored his brother Herman T. Pool, in giving him the easiest jobs around the plant and the question of retaining him as an employee had previously been discussed and said Pete Pool, foreman, had been advised that it was against the policy of the company for a foreman to employ his relatives. That the said Herman T. Pool was, however, kept during all the repair and maintenance work during the summer and fall of 1941 and was only laid off when said work was completed and at a time when the said company was not manufacturing any vegetable ice. That the said employee never did apply for reinstatement.

That the employee Herman Fruhn was laid off on July 31, 1941. That he had previously worked in the tank room and in the engine room. That his services in the tank room were satisfactory at all times but that the plant ceased manufacturing vegetable ice in June of 1941 and said employee was used in work around the machinery in installing the electric power and discontinuing the diesel plants. That his services were used until July 31, 1941, at which time he finished the particular work he had been doing and that there was, at that time, no other work around the plant which he could do until the commencement of the coming vegetable season in December of 1941. That said employee applied for reinstatement after the commencement of the shipping season in December of 1941. That he was reinstated and given work, and that he worked one day only and quit of his own accord.

#### X.

Deny each and every allegation and statement contained in paragraph numbered 10 of the complaint.

#### XI.

Paragraph 11 of the complaint is incomplete and uncertain. That these respondents cannot answer said paragraph because said paragraph is unintelligible and incomplete.

#### XII.

These answering respondents deny the allegations contained in paragraph 12 and allege that the union never had a majority of the employees of the re-



spondent Ice Company. That during the summer and fall months of 1941, as was the custom in each preceding year, the respondent Ice Company only employed a skeleton crew and that said union never did have a majority of said skeleton crew to the knowledge of these respondents, which skeleton crew was only about one-half of the regular number of employees so that respondent Ice Company emphatically denies that a majority of all employees, exclusive of supervisory and clerical employees, did designate the union as their representative for the purpose of collective bargaining and allege the fact company, and emphatically denies that the union is or has been since October 12, 1941, the exclusive representative of all employees in the unit for the purpose of collective bargaining and allege the fact to be that some time in the fall of 1941, the exact time being unknown to respondent Ice Company, that the Holtville Ice and Cold Storage Company Employees Association was formed by the employees, which said association is a labor organization within the meaning of Section II, Subsection 5 of the Act, and that said Association did, in the fall of 1941, have as its members a majority of the employees of said Ice Company exclusive of supervisory and clerical employees, and that said employees did designate said Association as their representative for the purpose of collective bargaining with respondent Ice Company, and that said Association is and has been at all times since its formation in the fall of 1941, the exclusive representative of all employees for the purpose of col-

lective bargaining with respondent Ice Company with respect to wages, rates of pay, hours of work, and other conditions of employment, and as far as respondent Ice Company and its officers know, said Association is in all things legal and regular and must be recognized by respondent Ice Company and dealt with as the exclusive representative of the employees for purposes of collective bargaining. And that in the fall of 1941 a contract was made and entered into between the employees and respondent Ice Company which said contract was renewed in the fall of 1942. That said contract contained provisions advantageous to the employees and by which contract the employees secured an increase in wages in the fall of 1941 and a further increase in the fall of 1942.

### XIII.

Deny generally and specifically each and every allegation and statement contained in paragraphs numbered 13, 14, and 15 of the complaint and allege the true facts to be that some time during October of 1941 two men whose names are unknown to respondent Ice Company or to its officers or agents came to the office of said Ice Company and left a copy of a proposed contract between Chauffeurs, Teamsters, and Helpers, Local 898, A.F.L., and Holtville Ice and Cold Storage Company. That F. A. Willard, manager and president of the company, was out of the County at the time said contract was left at his office and that within a few days after his return to his office said two men whose names are unknown again called and asked Mr.



Willard whether or not he had as yet read said contract. He replied that he had not but that he would be glad to do so and requested said two men to return to his office after he had had a chance to read the contract. That said two men never did return to his office nor in any way communicate with said respondent Ice Company or F. A. Willard until on January 12, 1942, when a letter was received asking that the Ice Company bargain with the union. Reply was made that a contract had been entered into with the local union. Nor did any other persons come personally or contact the said respondent Ice Company nor the said F. A. Willard regarding the proposed contract.

XIV.

Deny each and every allegation and statement contained in paragraph numbered 16 of the complaint.

XV.

Deny the allegations of paragraph numbered 17 of the complaint.

Wherefore, these respondents pray that findings and a decree be made to the effect that these answering respondents be dismissed and that findings and a decree be made to the effect that these respondents have not violated the National Labor Relations Act in any particular and that the complaint be dismissed.

HOLTVILLE ICE AND COLD  
STORAGE COMPANY

By F. A. WILLARD  
President

State of California

County of Imperial—ss.

F. A. Willard, being first duly sworn, deposes and says:

That he is the president of the respondent Ice Company in the above entitled action, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

F. A. WILLARD

Subscribed and sworn to before me this 25 day of January, 1943.

[Seal]

C. B. SMITH

Notary Public in and for said County and State.

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BOARD'S EXHIBIT No. 1-T

[Title of Board and Cause.]

ACKNOWLEDGEMENT OF SERVICE

On behalf of Holtville Ice and Cold storage Company Employees Association I herewith acknowledge receipt of the Complaint, Amendment to the Complaint, Notice of Hearing and Notice of Continuance of the Hearing in the above entitled matter.

Dated this 25th day of January, 1943.

HOLTVILLE ICE AND COLD  
STORAGE CO. EMPLOYEES  
ASSOCIATION

By M. K. STOUT, Secy.-Treas.

BOARD'S EXHIBIT No. 1-U

[Title of Board and Cause.]

ACKNOWLEDGEMENT OF SERVICE

The undersigned herewith acknowledge service of the Motion to Amend the Complaint in the above entitled matter, which is dated January 26, 1943, and signed by Charles M. Ryan.

Dated this 26th day of January, 1943.

HOLTVILLE ICE AND COLD  
STORAGE COMPANY

By C. B. SMITH  
ASSOCIATED FARMERS OF  
IMPERIAL COUNTY

By R. B. WHITELAW  
of Whitelaw & Whitelaw  
HUGH T. OSBORNE

By R. B. WHITELAW  
of Whitelaw & Whitelaw  
HOLTVILLE ICE AND COLD  
STORAGE COMPANY  
EMPLOYEES ASSOCIATION

By RUSSELL YEAGER  
CHAUFFEURS, TEAMSTERS  
AND HELPERS,  
LOCAL 898, A.F.L.

By ED ACHSTETTER

By S. MATHEWS

## BOARD'S EXHIBIT No. 1-V

[Title of Board and Cause.]

## MOTION TO AMEND COMPLAINT

Now comes Charles M. Ryan, attorney for the National Labor Relations Board, and moves to amend the Complaint in the above entitled matter as follows:

1. By inserting following Pargaraph 7 of the Complaint the following paragraph:

7(a) Respondent Holtville Ice and Cold Storage Company has been at all times since November 1, 1941 and is now, under written contract with Holtville Ice and Cold Storage Company Employees Association covering wages, rates of pay, hours of employment and other conditions of employment of employees of Respondent Holtville Ice and Cold Storage Company. Said contract is illegal and should be cancelled and set aside because of the acts of Respondents Holtville Ice and Cold Storage Company, Hugh T. Osborne and Associated Farmers as set forth in paragraph 7 of the Complaint and because Holtville Ice and Cold Storage Company Employees Association did not represent a majority of employees in an appropriate bargaining unit when the contract was entered into on or about November 1, 1941, and because Holtville Ice and Cold Storage Company Employees Association has never at any time represented an uncoerced majority of employees in an appropriate bargaining unit.

2. By striking the words "paragraph 7" from paragraph 8 of the Complaint and inserting in their stead the words "paragraphs 7 and 7(a)".

3. By inserting following the number "7" in line two of paragraph 15 of the Complaint the number "7(a)".

4. By inserting following the number "7" in line two of paragraph 16 the number "7(a)".

5. By inserting following the number "7" in line two of paragraph 17 the number "7(a)".

Dated this 26th day of January, 1943.

CHARLES M. RYAN

Attorney,

National Labor Relations  
Board

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BOARD'S EXHIBIT No. 1-W

[Title of Board and Cause.]

ANSWER OF HOLTVILLE ICE AND COLD  
STORAGE COMPANY EMPLOYEES AS-  
SOCIATION

Comes now the Holtville Ice and Cold Storage Company Employees Association, who in answer to the Amended Complaint in the above matter admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraphs 1 (a), 1 (b), 1 (c), and 1 (d); denies the allegations of paragraph 1 (e).



## II.

Admits the allegations of paragraph 2.

## III.

The Employees Association has no information or belief regarding the allegations contained in paragraph 3 and for that reason denies the same.

## IV.

The Employees Association has no information or belief regarding the allegations contained in paragraph 4 and for that reason denies the same.

## V.

The Employees Association has no information or belief regarding the allegations contained in paragraph 5 (a) and for that reason denies the same; admit the allegations contained in paragraph 5 (b).

## VI.

Denies specifically each and every allegation contained in paragraph 6 of the amended complaint.

## VII.

Denies specifically each and every allegation contained in paragraph 7 of the amended complaint; referring to paragraph 7 (a), the Employees Association denies each and every allegation of said paragraph, except that said association admits that it has been since November 1, 1941, under written contract with the Holtville Ice & Cold Storage Company covering wages, rates of pay, hours of em-



ployment and other conditions of employment of the employees of said company.

VIII.

Denies the allegations contained in paragraph 8 of the amended complaint.

IX.

The Employees Association denies each and every allegation contained in paragraph 9 of the amended complaint, except that said Association does admit that during the slack season of 1941 said employees were temporarily taken off the payroll.

X.

Denies each and every allegation contained in paragraph 10 of said amended complaint.

XI.

The Employees Association has no information or belief concerning paragraph 11 of the amended complaint and for that reason denies the same.

XII.

Denies each and every allegation contained in paragraph 12 of said amended complaint.

XIII.

The Employees Association does not have any information or belief concerning the allegations contained in paragraph 13 of the amended complaint and for that reason denies the same.

## XIV.

Denies the allegations contained in paragraph 14 of the amended complaint.

## XV.

Denies the allegations contained in paragraph 15 of the amended complaint.

## XVI.

Denies the allegations contained in paragraph 16 of the amended complaint.

## XVII.

Denies the allegations contained in paragraph 17 of the amended complaint.

Wherefore, the Employees Association prays that findings and a decree be made dismissing this amended complaint herein and designating the Employees Association as the exclusive bargaining agent for the employees of the Holtville Ice & Cold Storage Company.

RUSSELL YEAGER

Attorney for the Holtville Ice  
& Cold Storage Company  
Employees Association

State of California

County of Imperial—ss.

M. K. Stout, being first duly sworn, deposes and says:

That he is an officer, to-wit: the Secretary-Treasurer of the Employees Association, Holtville Ice and Cold Storage Company, and that he makes this

verification for and on behalf of said Association; that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to matters therein contained upon information and belief and as to those matters that he believes it to be true.

M. K. STOUT

Subscribed and sworn to before me this 8th day of February, 1943.

[Seal]

HAZELE LIVINGSTON

Notary Public in and for the said County and State.

United States of America  
Before the National Labor Relations Board  
Trial Examining Division  
Washington, D. C.

Case No. 21-C-1985

In the Matter of

HOLTVILLE ICE AND COLD STORAGE COMPANY, ASSOCIATED FARMERS OF IMPERIAL COUNTY, and HUGH T. OSBORNE

and

TRUCK DRIVERS, WAREHOUSEMEN AND HELPERS UNION 898, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, A. F. OF L.<sup>1</sup>

Mr. Charles M. Ryan and Robert C. Moore,  
for the Board.

Mr. Clarence B. Smith, of El Centro, Calif.,  
for the respondent Ice Company.

Mr. R. B. Whitelaw, of El Centro, Calif.,  
for the Associated Farmers and Hugh T. Osborne.

Mr. A. H. Petersen, of Los Angeles, Calif.,  
for the A. F. of L.

Mr. Ed Achstetter, of El Centro, Calif.,  
for the Union.

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<sup>1</sup>The evidence shows this to be the correct name of the Union.

## INTERMEDIATE REPORT

## Statement of the Case

Upon a third amended charge<sup>2</sup> duly filed by Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-First Region (Los Angeles, California), issued its complaint dated December 30, 1942, against Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne, herein collectively called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices, the complaint as amended at the hearing alleged in substance that: (1) the respondents repeatedly from September 1, 1941, to the date of the complaint discouraged the employees of Holtville Ice and Cold Storage Company, herein called the Ice Company, from joining or retaining membership in the Union, by characterizing unions as "rackets," and union members as "racketeers" and "Communists"; by advising said employees that membership in a union would be of no benefit to them; by stating to said

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<sup>2</sup>The original charge was filed January 3, 1942.



employees that the Ice Company would never recognize the Union; by threatening said employees with discharge if they joined or remained members of a union; by advising said employees to refrain from union activities, and by questioning said employees about their union activities; (2) the respondents on or about September 15, 1941, sponsored, promoted, assisted and interfered with the formation of the Holtville Ice and Cold Storage Company Employees Association, herein called the Association, and since that time have dominated, supported and interfered with the administration of the Association, and have coerced and encouraged the employees of the Ice Company to accept the Association as collective bargaining representative; (3) the Ice Company on specified dates in October and November 1941, discharged and has since refused to reemploy Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn because they joined and assisted the Union and engaged in concerted activities for their mutual aid and protection; (4) since November 1, 1941, the Ice Company has had a written contract with the Association covering wages, hours, and working conditions, and that such contract is illegal, because of the assistance rendered to the Association by the respondents, and because the Association did not represent a majority, or an uncoerced majority, of the employees in an appropriate bargaining unit at the time when the contract was executed; (5) on or about October 12, 1941, and at all times thereafter the respondents

refused and failed to bargain collectively with the Union (the Union having previously been designated as collective bargaining agent by a majority of the Ice Company's employees in the appropriate bargaining unit specified in the complaint); and (6) by the foregoing acts the respondents interfered with, restrained and coerced the Ice Company's employees in the exercise of rights guaranteed in Section 7 of the Act.

The complaint and accompanying notice of hearing were duly served upon the respondents, the Union, and the Association.

At the beginning of the hearing the respondents filed answers to the complaint. In their answers the respondents denied that they had committed unfair labor practices as alleged in the complaint, and pleaded certain affirmative defenses.

Pursuant to proper notice, a hearing was held January 25, 1943, and from February 8 to February 17, 1943, at El Centro, California, before Frank A. Mouritsen, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, the Association and the Union participated in the hearing either through counsel or representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing counsel for the Associated Farmers and Hugh T. Osborne objected to the entire proceeding upon the ground that the Board was without jurisdiction. The objection was overruled. At the conclusion of the hearing all

parties argued orally upon the record. The parties were advised that they might file briefs with the undersigned. No briefs have been received.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

## FINDINGS OF FACT

### I. The Respondents

#### A. Holtville Ice and Cold Storage Co.

The respondent Ice Company is a California corporation incorporated in 1926. Its office and place of business is located in Holtville, California, where it is engaged in the manufacture, sale and distribution of ice. During the year 1941 its monthly purchase of electric power and water approximately \$2800. Its sale of ice during 1941 totaled \$111,387. In 1942, the sales totaled \$139,339. Substantially all of the ice produced is sold to vegetable packing companies located in Holtville. The Ice Company owns and leases to the packing companies, to which it sells ice, packing sheds where the vegetables are packed and placed in railroad refrigerator cars for shipment. The ice sold to the packing companies is used to pack the vegetables and to ice the railroad cars. During the year 1942 the ice manufactured by the Ice Company was used by its packing customers to ice a total of 2,812 railroad cars, of which at least 75 percent were shipped out of the State of California.

The number of employees of the Ice Company varies from 5 or 6 during the slack season to be-

tween 25 and 35 during the peak of the shipping season.

B. The Associated Farmers  
and Hugh T. Osborne

The Associated Farmers of Imperial County is a non-profit corporation organized and existing under the laws of the State of California since 1936. The purposes for which it was formed, as set out in the copy of its Articles of Incorporation, filed in the evidence, are:

To protect, preserve and maintain American Institutions and ideals; to preserve the constitutional form of Government in both Nation and State; to oppose and combat and all doctrines or practices which imperil the maintenance [sic] of these constitutional liberties; to protect American Schools and the constitutional privileges [sic] which the educationay system of America has brought to all children; to fight against the infiltration of subversive doctrines into the educational system and into the Government; to combat the dictatorship of individuals or groups; to foster and encourage respect for and to maintain law and order, particularly by cooperation with local, state and national official and governmental agencies; to promote the prompt, orderly and efficient [sic] administration of justice; and to promote and protect the economic [sic] and agricultural welfare of the citizens of the United States and particularly of the Citizens of California.



The activities which led to the organization of the Associated Farmers are set out in the certificate of the Secretary of the organization attached to the Articles of Incorporation as follows:

That the organization came into being as a result of a series of disturbances in the agricultural districts of the State; investigation of these disturbances showed conclusively that, almost without exception, the disturbances were caused and fomented by radical and/or communistic agitators, [sic] who came into the agricultural districts of the State with the avowed purposes of bringing about so-called labor troubles among [sic] the workers.

That these agitators were affiliated directly with or were members of the Communist Party, U.S.A. and/or The Trade Union Unity League, and/or the Cannery and Agricultural Workers Industrial Union or similar organizations, affiliated with, subsidiary to or sympathetic to these organizations.

Membership in the Associated Farmers is not restricted to farmers, and it numbers among its members many of the business and professional people of the Imperial Valley. The Ice Company has been a member of, and a contributor to, the Associated Farmers since 1936. The Associated Farmers is entirely dependent upon contributions of its members for its income. Hugh T. Osborne has been secretary-manager of the Associated Farmers since July 1937.



The Associated Farmers have been instrumental in setting up a number of unaffiliated labor organizations among the employees of different business concerns in the Imperial Valley.

## II. The organizations involved

**Truck Drivers, Warehousemen and Helpers Union 898**, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and **Holtville Ice and Cold Storage Company Employees Association**, are labor organizations admitting to membership employees of the Ice Company.

## III. The unfair labor practices

### A. The background of the unfair labor practices

The employees of the Ice Company first became interested in union organization in April or May 1941. At that time a number of them visited the office of the Union in El Centro, and made some inquiries, but took no further action. The Ice Company operates as a general rule from the first of November of one year until July or August of the following year, and between August and November operations are greatly curtailed. During these slack periods the Ice Company attempts to give its regular employees as much maintenance work as possible in order to hold them together. During the summer of 1941 there was an unusual amount of work to be done around the plant during the slack season, as the Ice Company was changing from Diesel to electric power, and the Diesel engines had to be removed,

and electric motors installed. The installation of the electrical equipment and some of the remodeling incident to the change in the method of operation were done by contractors who employed union help exclusively. The employees of the Ice Company who performed maintenance work around the plant, some of whom were hired by the contractors, noted the disparity between the wages paid under the union scale and those which they received from the Ice Company. The union employees of the contractors also did some proselyting among the employees of the Ice Company, and interest in organization revived. On September 26, 1941, a number of the Ice Company employees visited the Union office in a body, and after voting among themselves to designate the Union as collective bargaining agent, about 10 of them signed applications for membership in the Union which also granted the Union authority to represent them for the purposes of collective bargaining.<sup>3</sup> Shortly thereafter a number of the employees who applied for membership in the Union were laid off. Between the time when the employees applied for membership in the Union and the time when the Ice Company commenced operations on October 29 the Association was formed. The Ice Company and the Association executed a collective bargaining contract dated as of November 1, 1941, covering wages, hours and working conditions. They executed a similar contract as of No-

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<sup>3</sup>The efforts of the Union to bargain with the Ice Company on the basis of such authorizations is discussed hereinafter.

vember 1, 1942, which was in effect at the time of the hearing.

The supervisory employees of the Ice Company whose activities are considered hereinafter are F. A. Willard, president, Herman Smith, office manager, and Pete Pool, superintendent.

B. Interference, restraint and coercion  
by the Ice Company

It is apparent that Pete Pool, superintendent of the ice plant, learned that the employees had made application for membership in the Union shortly after it occurred. Within a day or so he questioned a number of the employees about their membership in the Union. He told employee L. C. Hart that Willard was "sure mad" because the employees had joined the Union. After asking employee Perry T. Blankenship if he had joined the Union and receiving an affirmative reply, he told Blankenship that the Union did not have a chance because the men who did the hiring were "a jump ahead" of the unions, and that he did not think they would ever make a success of it. After learning from his brother Herman T. Pool that he had joined the Union, Pete told him that he did not think it was "a very good idea," and added that Willard could get plenty of non-union men to operate his plant. Later after he had told Herman that he would not be employed during the next season, Pete asked him if he were still with the Union. When Herman replied that he was "going to ride it through," Pete told him, "You are just riding a blank train." After

questioning the employees, Pete Pool reported to Willard that the plant had "gone union."

Herman Smith, office manager of the Ice Company, also learned that the employees had made application to join the Union. On the morning after the employees signed the application blanks on September 26, he called employee L. H. Davis into the office and asked him what he knew about the men joining the Union. Davis said that he knew of the meeting the night before, but that he had not attended because of a prior engagement. He told Smith that he had heard that some of the men joined, but that he did not know how many or who they were.

The acts of Pool and Smith in questioning the employees about their union membership and Pool's attempts to discourage affiliation with the Union constitute interference, restraint, and coercion within the proscription of the Act.

C. The formation of the Association; interference, restraint and coercion by the Associated Farmers and Hugh T. Osborne

Shortly after Willard learned from Pete Pool that the employees had joined the Union, he called Hugh T. Osborne, secretary-manager of the Associated Farmers, and informed him that he was having some labor trouble at the plant. Osborne informed Willard that he knew all about the Union drive and promised to come to the plant to confer about it. Within the next day or so Osborne met with Willard at the plant. According to Osborne, Willard



was perturbed by the fact that his employees had joined the Union and asked Osborne what he should do. Osborne told Willard that he himself could do nothing about it without violating the Act. During the conference the formation of an unaffiliated organization was discussed, and according to Willard, Osborne told him that one of the concerns in the vicinity had had "difficulties" and thereafter the employees had formed their own union. Willard asked Osborne to "interest" himself in the situation, and Osborne promised to make an investigation. Shortly after this talk with Osborne, Willard conferred with R. B. Whitelaw, counsel for the Associated Farmers, about the "disturbance" at his plant.

Within a few days after his talk with Willard, Osborne questioned a number of the employees, including Tom Herring, George Harlan, Herman T. Pool and L. H. Davis, about their reasons for joining the Union, and suggested to some of them that they form an unaffiliated organization. Pool testified that when Osborne called on him he stated, "I'm connected with the Associated Farmers. I'm not going to let you bring the union into the Valley." Osborne presented arguments against joining the Union, cited an example of help given to the employees of one of the packing sheds by the Associated Farmers, and then advised Pool as follows, "If you are not too far in, think it over and back out." Pool said that he would think it over. Osborne denied that he had made the statements attributed to him by Pool. Inasmuch as Osborne's



testimony was inconsistent in many respects, the undersigned credits Pool's testimony.

Osborne questioned Davis about the reasons why the employees joined the Union. Davis told him that the men were dissatisfied with the wages they received, and that the disparity between their wage rates and the union scale had been demonstrated to them by the wages paid the union employees who helped in the installation of the electrical equipment. Osborne suggested the formation of a company union. Davis demurred, saying that a company union would have no power. Osborne then stated that the Associated Farmers were against organized labor, because it meant the closed shop, which was un-American. Then he said that Willard would close the plant down before he would deal with the A. F. of L., at the same time disclaiming that he had discussed the matter with Willard personally. Davis replied that he would stay with the others until the majority agreed to withdraw from the Union.

When Osborne spoke to Harlan, Harlan told him that some of the men had joined the Union. He added that he was not in favor of the Union, although he had signed an application blank which he had not turned in, and asked Osborne what he could do to keep from going into the Union. Osborne suggested the formation of an unaffiliated union, named a plant where such an organization had been formed, and agreed to give Harlan a copy of its constitution and bylaws. He gave Harlan these documents a few days later. Herring testi-

fied that he talked with Osborne about the formation of an unaffiliated association and that he gave Osborne the names of employees he thought would be interested in the formation of such an association. He gave him, however, the names of employees who had made application to join the Union.

During this same period Keith Metz, a director of the Associated Farmers, sought out employee Henry G. Miller, and advised him not to join the Union. He stated that since Miller was a landowner, it would not pay him to join the Union, as his credit would thereby be impaired. Metz stated further that Willard would be glad to have the employees form their own union, and that the Associated Farmers would be glad to be of assistance. He urged Miller to talk to Osborne with regard to the formation of an employees' union. Miller declined to go with him to see Osborne. The inference is warranted, in view of Metz's statements to Miller, that he talked with Miller at the behest of Osborne.

Osborne at first denied and then admitted that he reported back to Willard after questioning the employees. Osborne also admitted that he referred the employees to Whitelaw, then as now counsel for the Associated Farmers, for legal advice and assistance in setting up the unaffiliated association.

After Osborne's talks with them, Harlan, Stout and Herring, did go to Whitelaw and he assisted and advised them in the formation of the Association. About October 20 Stout, Harlan, Ireland, Drinkard, and one or two others, met at the home of Harlan and discussed the formation of the Association. Os-

borne was present and outlined the procedure to be followed.

On October 30 the Association held its first meeting, elected officers and a bargaining committee, and discussed the drafting of a collective bargaining contract to be submitted to Willard. Later a contract was negotiated with the Ice Company. About November 25 the contract was signed and was ante-dated to November 1. Whitelaw assisted the Association in the negotiation of the contract, which provided for exclusive recognition of the Association as collective bargaining agent and contained a provision, suggested by Whitelaw, that after a 15-day period all new employees hired by the Ice Company should become members of the Association in order to continue to work at the plant. On the occasion when the negotiating committee from the Association first met with Willard, Osborne was present, and introduced the committee to Willard as a bargaining committee of the Association, and stated that they desired to bargain with him. At that time Willard readily agreed to bargain with the committee, and accepted without question their unsupported claim to represent the employees despite the prior conflicting claim of the Union that it represented the employees.<sup>4</sup>

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<sup>4</sup>It appeared to the undersigned that Stout, Herring and Harlan were straining to make it appear that the Association claim to represent the employees ante-dated that of the Union, which was made October 28. Stout's testimony as to the time when the first Association request to bargain was made of Willard is conflicting. At one point he said it was

From the foregoing it is clear that Osborne initially suggested the formation of the Association. In making this finding the undersigned is not unmindful of the testimony of Stout and Harlan to the effect that the idea of forming an unaffiliated association originated among the employees themselves. That testimony is not convincing, however, as it is inconsistent with other portions of their own testimony as well as that of Osborne and other witnesses. It is clear that Osborne's assistance in forming the Association was not given in point of time until after he had been requested by Willard to "interest" himself in the activities of the employees. If Willard himself had assisted the Association as Osborne did, there would be no question but that the Association is company-dominated. The acts of Osborne done at the request of Willard are no less attributable to Willard. Osborne was clearly acting at the request and in the interest of the Ice Company, and resultantly is an employer within the meaning of the Act.

There was no contention that Osborne was not acting as an authorized agent of the Associated

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not made until after the formation of the Association on October 30. This is corroborated by the minutes of the first meeting of the Association. Later he said that an earlier request was made. In view of his conflicting testimony, and the additional fact that Willard on October 28 made no mention of any Association claims to the Union representatives, as he later did after the formation of the Association when requested by the Union to bargain, the undersigned finds that the Union claim to represent the employees antedated that of the Association.



Farmers in assisting the Association, although this contention was raised regarding Metz' activities. It has been inferred that the acts of Metz in talking to Miller were undertaken at the request of Osborne. The undersigned finds that the Associated Farmers are responsible for the Acts of Osborne and Metz. Osborne, representing the Associated Farmers, acted with reference to the Association at the request of Willard. The undersigned finds therefore that the Associated Farmers and the Ice Company are responsible for the acts of Metz and Osborne in assisting in the formation of the Association. By their acts of assistance to the Association all respondents have dominated and interfered with the formation of the Association, and have interfered with, restrained and coerced the Ice Company's employees in the exercise of the rights guaranteed in Section 7 of the Act. The Ice Company, the Associated Farmers, and Osborne should cease their acts of interference with the rights of the employees guaranteed by the Act. The Association which is a result of such acts of interference and assistance, is incapable of serving the employees as a true collective bargaining agent and should be disestablished.

D. The alleged refusal to bargain with the Union

1. The appropriate unit

The complaint alleged that all employees of the Ice Company, exclusive of supervisory and clerical employees constitute an appropriate bargaining unit. The Ice Company does not operate the entire



year. As a general practice it commences the manufacture of ice about the first of November each year, with what Willard termed his "regular" crew. From the beginning of November until about the first of January this crew is engaged in the manufacture and storage of ice, and but a small amount of ice is delivered during this period. Heavy delivery of ice to the packing sheds commences about the first of January each year and continues until May or June. Additional employees are added at the time when heavy delivery of ice starts, and the number of employees is thereafter increased as the delivery of ice increases. In the 1940-41 season which began about November 1, 1940, the Ice Company commenced operations with 19 employees. By January 15, 1941, the number had increased to 22, by February 1, to 27, and it remained fairly constant around that figure until the middle of May when it increased to 35. In July, which was the last month of the season, the number dropped to 25.

Counsel for the Board contended that the employees who commenced the season constituted the appropriate bargaining unit, and the employees who were employed after the start of the season should be excluded. Concerning the employees who started the season Willard agreed that they were "regular, normal" employees, and testified that the Ice Company attempted to hold them together by giving them maintenance work around the plant after the close of the ice shipping season. He testified that the extra employees who were put on for a

couple of weeks or so during the peak season were laid off the end of the peak season, and it was more or less according to chance whether they worked the following season.

The Ice Company contended that temporary employees, including a number of electricians, who were hired only for the purpose of installing the electrical equipment in the summer of 1941, be included in the appropriate unit. The electricians were hired admittedly for the installation work only, and did not engage in the manufacture or distribution of ice. They should be excluded from the unit. The other temporary employees were hired only for short periods of a few weeks during the peak of the ice season, and the Ice Company felt no obligation to give them employment the succeeding season. They also should be excluded. The Ice Company did not oppose the exclusion of supervisory and clerical employees from the unit, and they should be excluded as well.

In addition to the above, however, the records show that there were other employees commencing work during the winter who worked steadily for periods ranging from 2 to 7 months, who had been employed in previous seasons for about the same length of time, and who could have had a reasonable expectation of being reemployed in the following season. The undersigned rejects the contention of Board's counsel that only those employed at the commencement of the season should constitute the appropriate unit and concludes that these employees likewise should be included therein. Details were lacking

to show exactly how many employees would have been in the larger unit found to be appropriate. Although 13 employees had indicated, either by signing authorization cards or by payment on account of initiation fees, their designation of the Union as their bargaining agent, two of these had voluntarily left the Ice Company's employ before the commencement of the 1941-42 season and a third admittedly held a supervisory position and would have to be excluded from the unit.

Although the Union might have had a majority of the men who started the season either in 1940 or 1941, the evidence fails to prove that it had a majority of the much larger unit herein found to be appropriate. It is extremely doubtful that, had evidence of the size of the larger unit been clearly adduced, the Union would have proved a majority. Because therefore, of the failure of proof in regard to the size of the appropriate unit and consequently the failure of proof that the Union had a majority therein, the undersigned finds that the respondent Ice Company did not refuse to bargain with the Union within the meaning of the Act.

E. Discriminatory discharge of Standifer, Hart, Davis, Fredenburg, Blankenship, Pool, and Fruhn

The Board alleges that the above employees were discharged by all respondents on specified dates in October and November 1941 and have since been

refused reinstatement because they joined and assisted the Union. The Associated Farmers and Osborne denied the allegations, and asserted that they had no authority directly or indirectly to discharge the employees named. In its answer the Ice Company denied the above allegations of the complaint. Affirmatively it alleged that Standifer was laid off on October 3, because of lack of work, and that he never applied for reinstatement; that Hart was a repair mechanic, and that the Ice Company no longer required the services of a repair mechanic after the change from Diesel to electric power; that Willard decided to discontinue the services of Davis about a year prior to his discharge, and that neither Willard nor Smith knew of Davis' membership in the Union prior to his discharge; that Fredenburg was laid off in October 1941 because of lack of work, and that he did not thereafter apply for reinstatement; that Blankenship was laid off because of lack of work, and undoubtedly would have been reinstated had he applied for reinstatement at the commencement of the shipping season, but that he never did apply; that Herman T. Pool was laid off by his brother Pete Pool, because Pete Pool had been advised that it was against the policy of the Ice Company to employ his relatives, and that Herman T. Pool never did apply for reinstatement; and that Herman Fruhn was laid off because of lack of work on July 31, 1941, was reinstated in December 1941, worked one day and quit of his own accord.

All of the above employees except Davis applied



for membership in the Union and designated it as their collective bargaining agent on September 26, 1941; Davis did so on October 3. In view of Pete Pool's admission that he questioned the employees about their union membership, and later reported to Willard that the plant had "gone union", and in view of the fact that Osborne acquired the names of the Union applicants, questioned them, and reported back to Willard, the undersigned finds that Pool and Willard had knowledge of the fact that the above employees had applied for membership in the Union immediately after they did, rejecting the sole denial that they had such knowledge in the case of Davis. Pete Pool and Willard determined which employees should be recalled to work when the plant resumed operations on October 29, 1941.

From Osborne's testimony that Willard was "perturbed", and Pete Pool's testimony that Willard was "sure mad" because the employees joined the Union, as well as by the fact that upon learning that they had taken such action Willard immediately called Osborne, who had earlier assured him of the help of the Associated Farmers in the event of labor disturbances, and asked that he interest himself in the situation, the undersigned finds that Willard was disturbed and dismayed that his employees had joined the Union, and sought to combat such activity.

Herman T. Pool worked steadily for the Ice Company, except for brief lay-offs in 1937 and 1938, from 1935 to the date of his discharge in the second week of October 1941. Prior to 1935 he had worked for



the Ice Company for short periods in 1929 and 1931. Successively he had been promoted from laborer in the storeroom to crane operator and finally to engine operator. Willard testified that he decided about a year before Pool's discharge to terminate his services because he had received complaints that the employees thought Pete Pool was favoring him in various ways. Willard named Herman Smith as the source of his information regarding the complaints. Neither Willard nor Smith gave the names of any employees who made such complaints. Pete Pool had been superintendent since 1939, more than 2 years before Herman's discharge, and he denied that he had favored Herman in any way.

Herman applied for membership in the Union on September 26, 1941, with the other employees. Pete learned of that fact a day or so later and told Herman that it was not a very good idea and that Willard could get plenty of non-union men to operate the plant. On October 1 Herman went on his vacation, at the instruction of Pete. At that time Pete said nothing to him about his discharge. While he was on vacation he was advised by Osborne to get out of the Union; he told Osborne he would think it over. Later, his brother Pete told him of the decision to discharge him. Some time thereafter Pete asked Herman if he were going to stick by the Union, and when Herman said that he was, Pete told him that he was riding a "blank train." Herman was the only employee discharged allegedly because of the rule against relatives working at the plant,

and Harlan, who was related by marriage to Pete Pool worked for the Ice Company after that time. The record does not show that the no-relative rule was conceived prior to the time when Herman had applied for union membership. Employees with no experience were given the job of crane operator, or "canpuller," in preference to Herman, who had considerable experience in that work. Employees who had not been given maintenance or repair work during the slack season, which Willard testified was given for the purpose of insuring the return of his regular employees, were retained in the employ of the Ice Company in preference to Herman, who had been given such maintenance work for several seasons, including the one just prior to his discharge. The discriminatory invocation of the no-relative rule, shortly after Pete Pool learned of his brother's application for membership in the Union, and directly following Herman's failure to accede to Osborne's request that he leave the Union, convinces the undersigned that the real reason for his discharge was the fact that he had applied for membership in the Union.

At the time of his discharge in October 1941, L. H. Davis had been in the employ of the Ice Company since 1932. During the ice shipping season he had charge of the delivery of ice to the packing sheds and assisted Herman Smith in the office. During the slack season he sold ice to customers who came to the plant and continued to work in the office. As noted, the Ice Company contended that he was discharged because there was little work for him to do

during the slack season. His discharge at the end of the slack season runs contrary to that contention. At the hearing, the Ice Company also contended that Davis' employ was terminated in order to cut down on the plant overhead. The work which Davis performed was taken over by employees Tom Herring and Jack Garber. Garber, who performed some of the office work done by Davis, was a new employee first hired on a part-time basis on September 1, 1941. He was kept on during the entire slack season in the summer of 1942. For his work on the platform during 1942, Herring's salary exceeded that paid Davis.

Davis applied for membership in the Union on October 3. Of all the employees who joined the Union the Ice Company denied only that it had knowledge that Davis had joined. However, that denial is not convincing. After the other employees applied for membership on September 26, Herman Smith questioned Davis about the Union meeting. Pete Pool questioned the employees who had applied for membership. Before he was informed of his discharge, Davis had rejected Osborne's suggestion that he form a company union, and had informed him of his determination to remain in the Union. The undersigned believes and finds that Osborne reported the results of his conference with Davis to Willard and Smith. Davis' work was admittedly very satisfactory.

Willard testified that he had decided to let Davis go at the beginning of the slack season in the summer of 1941, and had instructed Smith to that effect

before he left for the summer. When he returned to the plant in September he found that Smith had not carried out his instructions, and again told Smith that Davis was to be discharged. This testimony is rendered improbable by the fact that Davis was not discharged upon Willard's return, but over a month later, after the Ice Company had learned of his application for membership in the Union, and after he had advised Osborne that he would remain with the Union. It was just a short time after his conversation with Osborne that Davis was informed of his discharge. The undersigned finds that Davis was discharged because he made application for membership in the Union, and not because of the seasons advanced by the Ice Company.

In point of service Herman Fruhn was one of the oldest employees of the Ice Company. He started working for the Company as a crane operator in 1929 and continued to do that work until his lay-off in July 1941. After his lay-off he continued to work around the plant for Manchester, the contractor who did some of the work incident to the change-over to electric power.

Fruhn applied for membership in the Union on September 26. The Ice Company did not deny that it had knowledge of his application, and in view of Pete Pool's questioning of the employees about who attended the Union meeting on September 26, the undersigned finds that Pool had such knowledge. When Fruhn applied to Pool for his old job within a short time before and after the plant commenced



operations in October 1941, and asked when he should go back to work, Pool put him off saying that it was not yet time for him to go to work. Finally, after continued appeals to Pool, Smith and Willard, Fruhn was given work as a laborer in the storeroom. There the work was so heavy that he was able to complete but one shift and that only with the help of his son, whom he called in to assist him. Thereafter, when he requested Pool to give him his old job back, Pool ignored his request.

In its answer the Ice Company stated that Fruhn's work was satisfactory. At the hearing, contrary to the allegation in its answer, the Ice Company contended that Fruhn was not given his old job back in October 1941 because he tinkered with the crane that he operated and got it out of adjustment. Willard testified that Fruhn had tinkered with the crane for years, yet neither he nor Pool claimed that Fruhn had ever been warned not to tinker with the crane or that they disapproved of it. At no time prior to the hearing was Fruhn advised that the reason for the failure to reinstate him was his tinkering with the crane. Because of the foregoing facts the undersigned does not credit the testimony that Fruhn was not rehired because he tinkered with the crane. Several of the men who replaced Fruhn as a crane operator in 1941 had no experience in operating the crane; as noted, Fruhn had given 11 or 12 years of satisfactory work in that job. The undersigned finds that Fruhn was not given his old job back because Pool learned that he applied for membership in the Union. This finding is not disproved by the



fact that Fruhn was later given work in the storeroom. The work in the storeroom was heavy work demanding strong men. Fruhn was a slight, thin individual. It was apparent to the undersigned, as it was to the Ice Company, that Fruhn could not perform that work.

The cases of Herman T. Pool, Davis, and Fruhn follow a common pattern. In each case an employee who has given long years of satisfactory service was discharged or refused work for alleged reasons which do not stand up under scrutiny.

Lester C. Hart, the oldest employee in point of service, commenced his employment with the Ice Company in 1926. He was first a laborer, then a crane operator, next an engine operator, and finally was made plant mechanic, the position he held at the time of the termination of his employment in October 1941.

Hart signed an application for membership in the Union on September 26 with the other employees. The next day, Pete Pool told them that Willard was "sure mad" because the employees joined the Union. A few days later Pool told Hart to go on his vacation. At that time Pool gave no indication that Hart would not be put back to work at the end of his vacation, and the work that Hart was doing had not been completed at that time. During this same period Pool asked Hart if the employees were trying to "blackball" him in that they did not tell him that they were going over to join the Union, adding that

he would like to have gone also.<sup>5</sup> It is clear that Pool knew that Hart had made application to join the Union.

When Hart returned to the plant from his vacation, he punched his time card, then sought Pool and asked him what he should do. Pool told him that Willard had instructed him to lay everyone off, and Hart went home. At that time the work which Hart had been doing before his vacation had not been completed. Subsequently this work was sent out of the plant to be completed. Hart thereafter applied to Pool for reinstatement on numerous occasions without success.

The Ice Company contended that Hart's services were terminated because there was no need for the services of a repair mechanic after the change from Diesel to electric power. This appears to be contrary to the facts. At the time when Hart was laid off after his vacation, the work he had been doing was not completed. According to Pool's testimony he did part of the work formerly done by Hart, and part of such work was sent out of the plant to be done. While the amount of repair work undoubtedly decreased after the Diesel engines were eliminated, the undersigned is not convinced that it decreased to the point where need for the services of a repair mechanic were eliminated altogether. While operating with Diesel power the Ice Company had required two repair mechanics. Wooldridge, the

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<sup>5</sup>In view of Pool's anti-union statements, both before and afterwards, the undersigned finds that on this occasion Pool was merely being facetious.

other mechanic, had quit the employ of the Ice Company, so that Hart was the only one left. Hart had done electrical work at the plant prior to the change-over. The fact that Hart was the oldest employee of the Ice Company in point of service; that he had performed satisfactorily practically every duty in the plant; that he was not offered work in any other department, in combination with the fact that there remained mechanical and electrical work to be done, convinces the undersigned that Hart's services were terminated because he applied for membership in the Union.

Arthur Standifer was first employed by the Ice Company in January 1936. He worked for 2 years in the storeroom, for over 2 years as a crane operator, and during part of the last season he worked he was the relief engine operator. During the summer of 1941 and up to October 3 he did repair and maintenance work around the plant.

Standifer signed an application for membership in the Union on September 26. The Ice Company did not deny that it had knowledge of the fact that Standifer made such application, and the undersigned finds that it obtained such knowledge through Pool's questioning of the employees.

In its answer the Ice Company alleged that the work Standifer was doing was completed on October 3. Standifer testified that the work he was doing was not completed at that time, and this testimony is credited over Pool's testimony to the contrary, in view of the corroborative testimony of Hart to the effect that the repair and maintenance work was

not completed some 10 days later, which testimony was not denied. The *The Ice Company's* answer also alleged that Standifer never applied for reinstatement. This appears to be an invalid contention in view of the customary practice that the Ice Company followed in notifying its regular employees to report for work in the event they were not present when the plant started or when their services were needed. In any event, Standifer's testimony that he did apply to Pool for reinstatement is undenied, and is credited, as is Standifer's testimony that he talked to Pete Pool and Herman Smith on a number of occasions both before and after the plant started operations in October 1941, so that they knew he was available for work. Willard testified that work was available which Standifer could do, but that he and Pool selected men they thought were better fitted to do the work. It has been pointed out that employees were put on as crane operators who had no previous experience in that work. Standifer had almost 3 years' experience as a crane operator. Some of the men given the crane operating jobs in the 1941-42 season had little or no experience. Men who had never worked for the Ice Company before were selected to work in the storeroom in preference to Standifer. Under these circumstances the undersigned finds that Standifer was discharged on October 3, and was later refused reinstatement because he made application to join the Union on September 26.

Perry T. Blankenship was first hired by the Ice Company to work in the storeroom in May 1940.



He worked till July, when he was laid off. He was again employed in September 1940 as a crane operator. During the last part of the season in the summer months of 1941 he worked as a relief crane operator and was a relief engine operator. After his lay-off in July he worked at short periods for the Ice Company and for the contractors who were doing the work incident to the change-over from Diesel to electric power.

He applied for membership in the Union with the other employees on September 26. Within a day or so, Pete Pool asked him if he had joined the Union. When replied that he had, Pool told him that the Union "didn't have a chance."

The Ice Company's answer alleges that Blankenship never applied for reinstatement. Blankenship testified that in October before the plant commenced operations he asked Pool when he could go back to work, and that Pool ignored his request. This was not denied by Pool, and is credited by the undersigned. Failure to put Blankenship back to work as a crane operator would hardly be conclusive of the fact that he was being denied work because of his Union activities, in view of the fact that he had been with the Ice Company for only two seasons, although it seems logical that he would be better qualified to perform such work than those who had never done it. However, the fact that entirely new employees and employees with much less experience were given work in the storeroom in preference to Blankenship convinces the undersigned that Blank-



enship was not reinstated because Pool learned that he had applied for membership in the Union.

Henry C. Fredenburg first started to work for the Ice Company in November 1937. He first worked as a laborer, and then became a truck driver, which was the type of work he was doing at the time of his lay-off in October 1941. During the slack season he delivered clear ice on an established route; during the busy season he delivered ice to the vegetable packing sheds.

On September 26 he joined the Union with the other employees. A few days later Pete Pool asked him if he had joined the Union and he replied that he had.

In its answer the Ice Company stated that Fredenburg would undoubtedly have been reinstated had he applied at the commencement of the vegetable shipping season, but that he never applied. At the hearing Willard admitted that Fredenburg applied to him for reinstatement, and did not dispute Fredenburg's testimony that the application was made in December, which would be just before the commencement of the vegetable shipping season. His request for reinstatement was denied. Shortly thereafter the Ice Company hired an entirely new employee in preference to reinstating Fredenburg. Such evidence clearly establishes the discriminatory refusal to reinstate Fredenburg. The undersigned finds that Fredenburg was denied reinstatement because of the fact that he had applied for membership in the Union.

In making the above findings the undersigned has taken into consideration the fact that because of the change-over from Diesel to electric power the jobs of six or seven employees would be eliminated. However, before the plant commenced operations in October 1941, four or five employees who started the preceding season quit and thus eliminated themselves from consideration. While the pay rolls during the first half of 1942, indicate that the Ice Company employed, on the average, 6 or 7 fewer men, the pay rolls for that period also disclose that no fewer than 5, and at times as many as 11 or more, new men were used. In other words, there appears to have been steady work from January 15, 1942, to July 15, 1942, for no fewer than five new men. By hiring entirely new employees and employees with limited experience in preference to the more experienced and satisfactory employees listed above, the Ice Company defeated its contention that such employees were not reinstated because of lack of work.

In considering whether the above employees were discharged or refused reinstatement because of their Union activities, the undersigned is of the opinion that some weight is to be given to the fact that Fruhn was the only employee who had applied for membership in the Union and who had remained steadfast in his views who was employed to work during the following season. As noted, Fruhn was given heavy work which he had not done before and which he obviously could not do. On the contrary those who did not join the Union, or those who, hav-

ing applied for membership, thereafter actively promoted the Association were given steady employment and the preferred jobs. Through Pool's questioning of the employees about their Union membership and through Osborne's activities against the Union and in favor of the Association, the Ice Company was clearly informed as to which of the employees remained steadfast with the Union, and which employees were willing to go along with the Association. Despite Willard's and Pool's denials, the undersigned is convinced that this was one of the factors which determined which of the employees were to be recalled to work in the season beginning October 29, 1941.

The proof does not support the allegation that the respondents other than the Ice Company discriminated against the above employees in regard to their hire and tenure of employment.

#### IV. The effect of the unfair labor practices upon commerce

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondent Ice Company described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The remedy

Having found that the respondents have engaged in certain unfair labor practices, the undersigned

will recommend that they be required to cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondents have dominated and interfered with the formation of the Association and have contributed support thereto. The effect and consequences of the respondents' domination of, interference with, and support of the Association, as well as continued recognition of the Association by the Ice Company as the bargaining representative of its employees, constitutes a continuing obstacle to the free exercise by its employees of the rights guaranteed to them in the Act. Because of the respondents' illegal conduct with regard to it, the Association is incapable of serving the Ice Company's employees as a genuine collective bargaining agency. Accordingly, it will be recommended that the Ice Company withdraw all recognition from the Association and completely disestablish it as the representative of any of its employees for the purposes of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of work, or other conditions of employment. The contracts dated November 1, 1941, and November 1, 1942, between the Ice Company and the Association are invalid since they are a means whereby the Ice Company utilizes an employer-dominated labor organization to frustrate self-organization and to defeat collective bargaining by its employees. Moreover, they provide for exclusive recognition of the Association, al-



though at the time the contracts were made that organization had not been designated by an uncoerced majority of the employees covered by the contract as their representative for the purposes of collective bargaining. The undersigned will recommend that the Ice Company cease and desist from giving effect to these or any other agreement with the Association in respect to rates of pay, wages, hours of work, or other conditions of employment. Nothing in these recommendations, however, shall be deemed to require the Ice Company to vary or abandon the wage rates or other substantive features of its relations with its employees which the Ice Company may have established in conformity with the contracts, as extended, renewed, modified, supplemented, or superseded.

The Associated Farmers and Hugh T. Osborne have dominated and interfered with the formation of the Association, and contributed support thereto. Such activities were carried on in order to forestall organization by a legitimate labor organization. It will be recommended that the Associated Farmers and Hugh T. Osborne cease and desist from such activities, and that they inform their members and contributors of such injunction.

It has been found that the Ice Company discriminated in regard to the hire and tenure of employment of Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn because they applied for membership in the Union. It will be recommended that the Ice Company offer to those



employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, dismissing if necessary new employees hired since the date of the Ice Company's discrimination against the above employees, and make them whole for any loss of pay each has suffered by reason of the discrimination against him from the date of the Ice Company's discrimination against him to the date of the Ice Company's offer of reinstatement, less his net earnings<sup>6</sup> during said period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

### CONCLUSIONS OF LAW

1. Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and Holtville Ice and Cold

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<sup>6</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

Storage Company Employees Association, are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondents Associated Farmers of Imperial County, and Hugh T. Osborne, are employers of the employees involved herein, within the meaning of Section 2 (2) of the Act.

3. By interfering with, restraining, and coercing the employees of the Ice Company in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. By dominating and interfering with the formation of the Association and by contributing support to it, all the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

5. By discriminating in regard to the hire and tenure of employment of Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn, the respondent Ice Company has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

7. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

8. The respondents Associated Farmers of Imperial County and Hugh T. Osborne have not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

## RECOMMENDATIONS

Upon the above findings of fact and conclusions of law, the undersigned recommends that:

1. The respondent Holtville Ice and Cold Storage Company, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Dominating or interfering with the formation of the Holtville Ice and Cold Storage Company Employees Association, or with the formation and administration of any other labor organization of its employees and from contributing support and assistance to said Association or to any other labor organization of its employees;

(2) Giving effect to the contract of November 1, 1942, with the Holtville Ice and Cold Storage Company Employees Association, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract;

(3) Discouraging membership in Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in

regard to their hire and tenure of employment or any term or condition of employment;

(4) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

(b) Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(1) Withdraw all recognition from Holtville Ice and Cold Storage Company Employees Association, as the representative of any of its employees for the purposes of dealing with the respondent Ice Company concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment and completely disestablish the Association as such representative;

(2) Offer to Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(3) Make whole Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool and Herman Fruhn, for any loss of pay they may have suffered by reason of the respondent Ice Company's discrimination



against them by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings<sup>7</sup> during said period;

(4) Post immediately in conspicuous places in its plant and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent Ice Company will not engage in the conduct from which it is recommended that it cease and desist herein; (2) that the respondent Ice Company will take the affirmative action herein recommended; and (3) that its employees are free to remain or become members of Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and that the Ice Company will not discriminate against any employee because of such membership or activity;

(5) File with the Regional Director for the Twenty-first Region (Los Angeles, California), within ten (10) days from the receipt of this Intermediate Report a report in writing setting forth in detail the manner and form in which it has complied with the foregoing recommendations.

2. The respondents Associated Farmers of Imperial County and Hugh T. Osborne, their officers, agents, successors and assigns, acting in the interest of the respondent Ice Company, or in the interest of any other employer, shall:

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<sup>7</sup>See footnote 6, *supra*.



(a) Cease and desist from:

(1) Dominating or interfering with the formation of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of the employees of the Ice Company, or any other employer, and from contributing support and assistance to said Association, or to any other labor organization of the employees of the Ice Company, or of any other employer;

(2) Soliciting and collecting funds from the respondent Ice Company, or from any other employer, to be used in whole or in part for the purpose of interfering with the rights of employees guaranteed in Section 7 of the Act;

(3) In any other manner interfering with, restraining, or coercing the employees of the Ice Company, or of any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid and protection, as guaranteed in Section 7 of the Act;

(b) Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(1) Immediately send notices in writing through the United States mails to all members and contributors of the Associated Farmers, including the respondent Ice Company, stating that each of them

will not engage in the conduct from which it is herein recommended that they cease and desist;

(2) Notify the Regional Director for the Twenty-First Region in writing, within ten (10) days from the receipt of this Intermediate Report, what steps they have taken to comply with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

It is recommended that the complaint be dismissed insofar as it alleges that the respondents engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

It is further recommended that the complaint be dismissed insofar as it alleges that the Associated Farmers of Imperial County and Hugh T. Osborne engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board—Series 2—as amended, effective October 28, 1942, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D.C., an original and four copies of a statement

in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

Dated: April 23, 1943.

FRANK A. MOURITSEN

Trial Examiner

United States of America  
Before the National Labor Relations Board

Case No. C-2598

In the Matter of

HOLTVILLE ICE AND COLD STORAGE COM-  
PANY, ASSOCIATED FARMERS OF IM-  
PERIAL COUNTY, and HUGH T. OS-  
BORNE

and

TRUCK DRIVERS, WAREHOUSEMEN AND  
HELPERS UNION 898, affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS, A. F. of L.

DECISION AND ORDER

On April 23, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set out in the copy of the Intermediate Report attached hereto. Thereafter the respondents and the Association filed exceptions to the Intermediate Report and briefs in support thereof. Oral argument before the Board was not requested and none was held. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no



prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Holtville Ice and Cold Storage Company, Holtville, California, its officers, agents, successors, and assigns, shall;

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company employees Association, or with the formation or administration of any other labor organization of its employees, and from contributing support or assistance to said Association, or to any other labor organization of its employees;

(2) Giving effect to its contract of November 1, 1942, with Holtville Ice and Cold Storage Company Employees Association, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract;

(3) Discouraging membership in Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., or any other labor organization of its employees by discharging or refusing to rein-



state any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(4) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Withdraw all recognition from Holtville Ice and Cold Storage Company Employees Association, as the representative of any of its employees for the purposes of dealing with the respondent Ice Company concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(2) Offer to Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Herman Fruhn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(3) Make whole Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Her-

man Fruhn, for any loss of pay they may have suffered by reason of the respondent Ice Company's discrimination against them by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during said period;

(4) Post immediately in conspicuous places in its plant and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent Ice Company will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1a (1) to (4), inclusive, of this Order; (2) that the respondent Ice Company will take the affirmative action set forth in paragraphs 1b (1) to (3), inclusive, of this Order; and (3) that its employees are free to remain or become members of Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and that the Ice Company will not discriminate against any employee because of membership in or activity on behalf of that organization;

(5) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

2. The respondents, Associated Farmers of Imperial County and Hugh T. Osborne, their officers,

agents, successors, and assigns, acting in the interest of the respondent Ice Company, or in the interest of any other employer, shall:

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of the employees of the Ice Company, or any other employer, and from contributing support and assistance to said Association, or to any other labor organization of the employees of the Ice Company, or of any other employer;

(2) Soliciting and collecting funds from the respondent Ice Company, or from any other employer, to be used in whole or in part for the purpose of interfering with the rights of employees guaranteed in Section 7 of the Act;

(3) In any other manner interfering with, restraining, or coercing the employees of the Ice Company, or of any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Immediately send notices in writing through the United States mails to all members and contributors of the Associated Farmers, including the

respondent Ice Company, stating that each of them will not engage in the conduct from which they are ordered to cease and desist in paragraphs 2a (1) to (3), inclusive;

(2) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondents engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

And It Is Further Ordered that the complaint, insofar as it alleges that the Associated Farmers of Imperial County and Hugh T. Osborne engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 22 day of July 1943.

[Seal]

HARRY A. MILLIS

Chairman

JOHN M. HOUSTON

Member

National Labor Relations  
Board



In the United States Circuit Court of Appeals  
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

HOLTVILLE ICE AND COLD STORAGE COM-  
PANY, ASSOCIATED FARMERS OF IM-  
PERIAL COUNTY, and HUGH T. OS-  
BORNE,

Respondents.

CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, “In the Matter of Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne and Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A.F.L.,” the same being Case No. C-2598 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.



Fully enumerated, said documents attached hereto are as follows:

(1) Copy of charge filed by Chauffeurs, Teamsters and Helpers, Local 898, A.F.L., filed January 3, 1942.

(2) Copy of first amended charge filed by Chauffeurs, Teamsters and Helpers, Local 898, A.F.L., filed February 2, 1942.

(3) Stenographic transcript of testimony held before Frank A. Mouritsen, Trial Examiner for the National Labor Relations Board on January 25, February 8, 9, 10, 11, 12, 13, 15, 16, and 17, 1943, together with all exhibits introduced in evidence.

(4) Copy of the intermediate Report of Trial Examiner Mouritsen, dated April 23, 1943.

(5) Copy of order transferring the case to the Board, dated April 27, 1943.

(6) Copy of respondents' telegram, dated May 8, 1943, requesting extension of time to file exceptions and briefs.

(7) Copy of telegram, dated May 10, 1943, granting all parties extension of time to file exceptions and briefs.

(8) Copies of respondents' exceptions to the Intermediate Report.

(9) Copy of decision and order issued by the National Labor Relations Board July 22, 1943, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has

hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 25th day of February 1944.

[Seal]

JOHN E. LAWYER

Chief, Order Section

National Labor Relations  
Board

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C.C.A. #10695

ORDER TO SHOW CAUSE

United States of America, ss:

The President of the United States of America

To Holtville Ice & Cold Storage Co., Holtville, Calif;  
Associated Farmers of Imperial County and  
Hugh T. Osborne, 207 Rehkopf Bldg., El Centro,  
Calif; Chauffeurs, Teamsters and Helpers,  
Local 898, A.F.L., 707 S. Hill St., Los Angeles,  
Calif., and Holtville Ice & Cold Storage  
Company Employees, Association, District Attorney's  
Office, El Centro, California

GREETING:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 2nd day of March, 1944 a petition of the National Labor Relations Board for enforcement of its order entered on July 22, 1943 in a proceeding known upon the

records of the said Board as "In the Matter of Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County and Hugh T. Osborne and Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A.F.L., Case No. C-2598," and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, this 2nd day of March in the year of our Lord one thousand nine hundred and forty-four.

[Seal]

PAUL P. O'BRIEN

Clerk of the United States  
Circuit Court of Appeals  
for the Ninth Circuit.

#### RETURN ON SERVICE OF WRIT

United States of America,  
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Holtville Ice

& Cold Storage Co. by handing to and leaving a true and correct copy thereof with H. P. Smith, Secretary, personally at Holtville, in said District on the 4th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal.

By DAVID E. HAYDEN

Deputy.

Marshal's Fees .....	\$ 8.00
Mileage .....	\$
Expenses .....	\$13.44
	<hr/>
Total.....	\$21.44

Expense Acct. #48940

## RETURN ON SERVICE OF WRIT

United States of America,  
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Associated Farmers of Imperial County and Hugh T. Osborne by handing to and leaving a true and correct copy thereof with Hugh F. Osborne, Secy., personally at El Centro, in said District on the 4th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal

By DAVID E. HAYDEN

Deputy.

Expense Acct. 48940

## RETURN ON SERVICE OF WRIT

United States of America,  
So. District of Calif.—ss.

I hereby certify and return that I served the annexed Petition on the therein-named Holtville Ice & Cold Storage Co. Employees' Asso. by handing to and leaving a true and correct copy thereof with M. K. Stout, Secretary, personally at Holtville, in said District on the 4th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal

By DAVID E. HAYDEN

Deputy.

Expense Acct. #48940

## RETURN ON SERVICE OF WRIT

United States of America,  
Southern District of California—ss.

I hereby certify and return that I served the annexed Decree on the therein-named Chauffeurs, Teamsters and Helpers Local 898 A.F.L. by handing to and leaving a true and correct copy thereof with Iner Mohn, Trustee to Chauffeurs, Teamsters & Helpers Union personally at Los Angeles, in said District on the 8th day of March, 1944.

ROBERT E. CLARK

U.S. Marshal

By CHARLES L. ELLIS

Deputy.

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.



In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10695

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

HOLTVILLE ICE AND COLD STORAGE COM-  
PANY, ASSOCIATED FARMERS OF IM-  
PERIAL COUNTY, and HUGH T. OS-  
BORNE,

Respondents.

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Cir-  
cuit:

The National Labor Relations Board, pursuant to  
the National Labor Relations Act (Act of July 5,  
1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.),  
respectfully petitions this Court for the enforce-  
ment of its order against respondents, Holtville Ice  
and Cold Storage Company, Holtville, California,  
its officers, agents, successors, and assigns, and As-  
sociated Farmers of Imperial County and Hugh T.  
Osborne, their officers, agents, successors, and as-  
signs, acting in the interest of the respondent Ice  
Company, or in the interest of any other employer.

The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Holtville Ice and Cold Storage Company, Associated Farmers of Imperial County, and Hugh T. Osborne and Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., Case No. C-2598."

In support of this petition, the Board respectfully shows:

(1) The unfair labor practices which are the subject of the present proceeding occurred in the State of California within this judicial circuit. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on July 22, 1943, duly stated its findings of fact, conclusions of law and issued an order directed to the respondents. So much of the aforesaid order as relates to this proceeding provides as follows:

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Holtville Ice and Cold Storage Company,

Holtville, California, its officers, agents, successors, and assigns, shall:

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of its employees, and from contributing support or assistance to said Association, or to any other labor organization of its employees;

(2) Giving effect to its contract of November 1, 1942, with Holtville Ice and Cold Storage Company Employees Association, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract;

(3) Discouraging membership in Truck Drivers, Warehousemen and Helpers Union 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(4) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action which

the Board finds will effectuate the policies of the Act:

(1) Withdraw all recognition from Holtville Ice and Cold Storage Company Employees Association, as the representative of any of its employees for the purposes of dealing with the respondent Ice Company concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(2) Offer to Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Herman Fruhn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(3) Make whole Arthur Standifer, Lester C. Hart, L. H. Davis, H. C. Fredenburg, Perry T. Blankenship, Herman T. Pool, and Herman Fruhn, for any loss of pay they may have suffered by reason of the respondent Ice Company's discrimination against them by payment to each of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during said period;

(4) Post immediately in conspicuous places in its plant and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent Ice Company will not engage in the conduct from which it is ordered to cease and desist in



paragraphs 1a (1) to (4), inclusive, of this Order; (2) that the respondent Ice Company will take the affirmative action set forth in paragraphs 1b (1) to (3), inclusive, of this Order; and (3) that its employees are free to remain or become members of Truck Drivers, Warehousemen and Helpers Union, 898, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L., and that the Ice Company will not discriminate against any employee because of membership in or activity on behalf of that organization;

(5) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

2. The respondents, Associated Farmers of Imperial County and Hugh T. Osborne, their officers, agents, successors, and assigns, acting in the interest of the respondent Ice Company, or in the interest of any other employer, shall:

a. Cease and desist from:

(1) Dominating or interfering with the administration of Holtville Ice and Cold Storage Company Employees Association, or with the formation or administration of any other labor organization of the employees of the Ice Company, or any other employer, and from contributing support and assistance to said Association, or to any other labor organization of the employees of the Ice Company, or of any other employer;



(2) Soliciting and collecting funds from the respondent Ice Company, or from any other employer, to be used in whole or in part for the purpose of interfering with the rights of employees guaranteed in Section 7 of the Act;

(3) In any other manner interfering with, restraining, or coercing the employees of the Ice Company, or of any other employer, in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid and protection, as guaranteed in Section 7 of the Act;

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Immediately send notices in writing through the United States mails to all members and contributors of the Associated Farmers, including the respondent Ice Company, stating that each of them will not engage in the conduct from which they are ordered to cease and desist in paragraphs 2a (1) to (3), inclusive;

(2) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

(3) On July 22, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, **bearing Government frank**, by registered mail, to respondents' attorneys.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondents, and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondents to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By HOWARD LICHTENSTEIN  
Assistant General Counsel

Dated at Washington, D. C., this 25th day of February 1944.

District of Columbia—ss.

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made

therein are true to the best of his knowledge, information and belief.

HOWARD LICHTENSTEIN

Assistant General Counsel

Subscribed and sworn to before me this 25th day of February 1944.

[Seal]

JOHN E. LAWYER

Notary Public, District of Columbia. My Commission Expires August 31, 1944.

[Endorsed]: Filed March 2, 1944. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of An Order of the  
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON  
BY THE BOARD

Pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the above entitled proceeding:

I.

The National Labor Relations Act is applicable to the operations of respondent Holtville Ice and Cold Storage Company.

II.

The Board's findings of fact are supported by substantial evidence. Upon the facts so found all

respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act and respondent Holtville Ice and Cold Storage Company has also engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

III.

The Board's order is valid.

Dated at Washington, D. C., this 25th day of February 1944.

HOWARD LICHTENSTEIN

Assistant General Counsel

National Labor Relations

Board.

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[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENTS ASSOCIATED  
FARMERS OF IMPERIAL COUNTY AND  
HUGH T. OSBORNE TO PETITION FOR  
ENFORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Associated Farmers of Imperial County and  
Hugh T. Osborne, respondents in the above entitled matter, in accordance with Section 10 (E) of the National Labor Relations Act (49 Stat. 453, Chap. 372, 29 U.S.C. Section 160 (E)), approved



July 5, 1935) answers the petition presented to this Honorable Court for the enforcement of a certain order of the National Labor Relations Board, hereinafter referred to as the "Board."

In answer to said petition these respondents admit, deny, and allege as follows:

### I.

Admits the allegations contained in Paragraph (1) of said petition except that respondents deny that it or he committed any unfair labor practices as alleged in said paragraph.

### II.

Admit the allegations in Paragraph (2) of said petition, that on July 22, 1943, the Board entered the order quoted in said paragraph, but deny, for lack of information or belief, all the other allegations in said paragraph.

### III.

Admit the allegations contained in Paragraph (3) of said petition.

### IV.

Deny, for lack of information or belief, the allegations contained in Paragraph (4) of said petition.

In Further Answer to Said Petition, Respondents Respectfully Allege:

That the findings of the Board as to the facts are not supported by the evidence, and more particularly allege that the evidence does not support the following findings of the Board in said matter:



(1) The finding that respondent Osborne discussed the formation of an unaffiliated organization with Willard, and that Willard asked Osborne to "interest" himself in the situation and Osborne promised to make an investigation.

(2) The finding that within a few days after his talk with Willard, Osborne questioned a number of the employees, including Tom Herring, George Harlan, Herman T. Pool, and L. H. Davis, about their reasons for joining the Union, and suggested to some of them that they form an unaffiliated organization.

(3) The finding that respondent Osborne suggested the formation of an unaffiliated Union to Harlan, named a plant where such an organization had been formed, and agreed to give Harlan a copy of its constitution and bylaws, and that Harlan gave to respondent Osborne the names of employees he thought would be interested in the formation of such an association. He gave him, however, the names of employees who had made application to join the Union.

(4) The finding that the inference is warranted in view of Metz' statement to Miller, that he talked with Miller at the behest of respondent Osborne, and the finding that Osborne admitted that he reported back to Willard after questioning the employees.

(5) The finding that Willard assisted the Association in the negotiation of the contract, which provided for exclusive recognition of the Asso-

ciation as a collective bargaining agent and contained a provision suggested by Whitelaw that after a fifteen day period all new employees hired by the Ice Company should become members of the Association in order to continue to work at the plant.

The finding that Willard readily agreed to bargain with the committee and accepted without question their unsupported claim to represent the employees, despite the prior conflicting claim of the Union that it represented the employees.

(6) The finding that it is clear that respondent Osborne initially suggested the formation of the Association, and the finding that Osborne was clearly acting at the request and in the interest of the Ice Company, and resultantly is an employer within the meaning of the Act.

(7) The finding that the acts of Metz in talking to Miller were undertaken at the request of respondent Osborne, and that the Associated Farmers are responsible for the acts of Osborne and Metz, and that the respondent Osborne, representing the Associated Farmers acted with reference to the Association at the request of Willard.

The finding that the Associated Farmers and the Ice Company are responsible for the acts of Metz and respondent Osborne in assisting in the formation of the Association.

The finding that by the acts of assistance to the Association all respondents have dominated and interfered with the formation of the Asso-

ciation, and have interfered with, restrained, and coerced the Ice Company's employees in the exercise of the rights guaranteed in Section 7 of the Act, and that the Ice Company, the Associated Farmers, and respondent Osborne should cease their acts of interference with the rights of the employees guaranteed by the Act.

(8) The findings on which the above findings were purportedly based.

(9) And any and all findings that respondent Associated Farmers and respondent Osborne, or either of them, interfered with, or restrained, or coerced the Association in its formation and activities.

In further answer to said petition, respondents respectfully allege: That the Board acted without and in excess of its powers in making and entering its conclusions of law and order in this matter by reason of the lack of evidence of the matters heretofore more particularly set forth.

In further answer to said petition, respondents respectfully allege: That objection was urged before the Board as to lack of evidence to support findings of the nature heretofore complained of as being without evidence to support them.

In further answer to said petition, respondents respectfully allege: That the Board in making its order that respondents Associated Farmers and Osborne, their officers, agents, successors, and assigns acting in the interest of any other employer shall

cease and desist from dominating or interfering with the formation or administration of any other labor organization of any other employer and from contributing support and assistance to any other labor organization of any other employer; and

Is without the jurisdiction of this Board and in violation of the guarantee of freedom of speech in (Article I) of Article VII of the Constitution of the United States.

Wherefore, respondents pray this Honorable Court that it deny the petition of the National Labor Relations Board for the enforcement of its order, that it set aside said order in its entirety, or if such prayer be denied, that it set aside the said order of the Board in such part as the same is not supported by evidence as is in this answer heretofore set forth with particularity, and insofar as set aside, that the Court relieve these respondents, and the officers, agents and representatives of respondent Associated Farmers of any necessity to comply therewith.

Dated: March 11, 1944.

WHITELAW & WHITELAW

By R. B. WHITELAW

Attorneys for Respondents,  
Associated Farmers of Imperial County and Hugh T. Osborne, as an individual  
207-210 Rehkopf Building  
111 North 6th Street  
El Centro, California  
Phone 67



State of California

County of Imperial—ss.

Hugh T. Osborne, being first duly sworn, says:

That he is the Secretary and Manager of respondent, Associated Farmers of Imperial County, a corporation; that he is authorized to and does make this verification on behalf of said respondent, and on behalf of himself as an individual; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

HUGH T. OSBORNE

Subscribed and sworn to before me this 11th day of March, 1944.

[Seal] R. B. WHITELAW

Notary public in and for said County and State.

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENT HOLTVILLE  
ICE AND COLD STORAGE COMPANY TO  
PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

Holtville Ice and Cold Storage Company, re-  
spondent in the above entitled matter, in accordance

with Section 10 (E) of the National Labor Relations Act (49 Stat. 453, Chap. 372, 29 U.S.C. Section 160 (E), approved July 5, 1935) answers the petition presented to this Honorable Court for the enforcement of a certain order of the National Labor Relations Board, hereinafter referred to as the "Board."

In answer to said petition, this respondent admits, denies and alleges as follows:

#### I.

Admits the allegations contained in Paragraph (1) of said petition except that respondent denies that it committed any unfair labor practices as alleged in said paragraph.

#### II.

Admits the allegations in Paragraph (2) of said petition, that on July 22, 1943, the Board entered the order quoted in said paragraph, but denies, for lack of information or belief, all the other allegations in said paragraph.

#### III.

Admits the allegations contained in Paragraph (3) of said petition.

#### IV.

Denies, for lack of information or belief, the allegations contained in Paragraph (4) of said petition.

In further answer to said petition, respondent respectfully alleges:

That the findings of the Board as to the facts are not supported by the evidence, and more particu-

larly alleges that the evidence does not support the following findings of the Board in said matter:

(1) The finding that respondent's employees, Pete Pool and Herman Smith, questioned employees and attempted to discourage affiliation with the union, and that their alleged activities constituted interference, restraint and coercion within the prescription of the act.

(2) The finding that the Ice Company is responsible for the acts of Metz and Osborne in assisting in the formation of the Association and that by their acts of assistance to the Association respondent has dominated and interfered with the formation of the Association and has interfered with, restrained and coerced the Ice Company's employees in the exercise of the rights guaranteed by Section 7 of the Act.

The finding that the Association is incapable of serving the employees as a true bargaining agent and that it should be disestablished.

(3) The finding that the Ice Company discriminated against the employees, Herman T. Pool, L. H. Davis, Herman Frohn, Lester C. Hart, Arthur Standifer, Perry T. Blankenship and Henry C. Fredenburg, because of their union activities, and the finding as to each man above named that the evidence establishes the discriminatory refusal to reinstate each because each applied for membership in the union.

(4) The finding that the activities of respondent have a close, intimate and substantial relation to trade, traffic and commerce among the several states

and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

(5) The findings on which the above findings were purportedly based.

(6) Any and all findings that respondent committed any unfair labor practice or violated the National Labor Relations Act in any respect.

In further answer to said petition, respondent respectfully alleges: That the Board acted without and in excess of its powers in making and entering its conclusions of law and order in this matter by reason of the lack of evidence of the matters heretofore more particularly set forth.

In further answer to said petition, respondent respectfully alleges: That objection was urged before the Board as to lack of evidence to support findings of the nature heretofore complained of as being without evidence to support them.

In further answer to said petition, respondent respectfully alleges: That the employees of respondent did, before any of them met Hugh Osborne or Keith Metz, discuss and consider the formation of an Employee's Association, and that said employees requested Mr. Osborne to loan them the By-Laws, including forms, etc., of an independent union from which they could pattern their own Employee's Association, long before the Ice Company or its agents had any knowledge of any union activities and that the employees did form their own Association, without assistance of any kind from the Ice Company, did bargain with the Ice Com-



pany, secured many benefits for themselves, and were and are all satisfied and want their Association to continue to act as their bargaining agent; that the Board, by its order, has refused to permit the employees to use their Association or to have it as their bargaining representative even though one hundred per cent of the employees are in favor of it and want it.

Wherefore, respondent prays this Honorable Court that it deny the petition of the National Labor Relations Board for the enforcement of its order, that it set aside said order in its entirety, or if such prayer is denied, that it set aside the said order of the Board in such part as the same is not supported by evidence as is in this manner heretofore set forth with particularity, and insofar as set aside, that the Court relieve respondent, its officers, agents and representatives, of any necessity to comply therewith.

Dated March 9, 1944.

CLARENCE B. SMITH

Attorney for Repondent,  
Holtville Ice and Cold Storage  
Company.

212 Rehkopf Building  
111 North 6th Street  
El Centro, California.

State of California

County of Imperial—ss.

F. A. Willard, being first duly sworn, says:

That he is the President and Manager of respond-

ent, Holtville Ice and Cold Storage Company, a corporation; that he is authorized to and does make this verification on behalf of said respondent; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

F. A. WILLARD

Subscribed and sworn to before me this 9 day of March, 1944.

[Seal] C. B. SMITH

Notary Public in and for said County and State.

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of an Order of the  
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON BY  
THE HOLTVILLE ICE AND COLD STORAGE COMPANY

Pursuant to Section 6 of Rule 19 of the Court, the Ice Company submits the following statement of points upon which it intends to rely in the above entitled proceeding:

I.

The National Labor Relations Act is not applicable to the operations of the respondent Holtville Ice and Cold Storage Company.

II.

The Board's findings of fact are not supported by substantial evidence. There is no substantial evidence to prove that this respondent has engaged in and is engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act, and there is no substantial evidence to indicate that this respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

III.

The Employee's Association was never assisted or dominated in any way by the Ice Company and is the bargaining representative for all of the employees.

IV.

The Ice Company did not discriminate against any employee because of his union activities.

V.

The Board's order should be reversed.

Dated at El Centro, California, this 9th day of March, 1944.

CLARENCE B. SMITH

Attorney for Holtville Ice and  
Cold Storage Company.

[Endorsed]: Filed March 13, 1944. Paul P.  
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

On Petition for Enforcement of an Order of the  
National Labor Relations Board

STATEMENT OF POINTS RELIED UPON BY  
THE ASSOCIATED FARMERS OF IM-  
PERIAL COUNTY, AND HUGH T. OS-  
BORNE

Pursuant to Section 6 of Rule 19 of the Court, the Associated Farmers and Hugh T. Osborne submit the following statement of points upon which it and he intend to rely in the above entitled proceeding:

I.

The National Labor Relations Act is not applicable to the operations of the respondents Associated Farmers of Imperial County, and Hugh T. Osborne.

II.

The Board's findings of fact are not supported by substantial evidence. There is no substantial evidence to prove that these respondents have engaged in and are engaged in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act.

III.

The Employee's Association was never assisted or dominated in any way by these respondents and is the bargaining representative for all of the employees.

IV.

That these respondents do not come within the



meaning of Section 2, Subdivisions (2) and (3) of the National Labor Relations Act;

V.

That the Board has, by its order of cease and desist to the respondents, abridged the freedom of speech and contravenes (Article I) of Article VII of the Constitution of the United States.

VI.

That these respondents have not intefered, restrained or coerced the employees of the respondent Iet Company in the formation of the Association.

VII.

The Board's order should be reversed.

Dated at El Centro, California, this 11th day of March, 1944.

WHITELAW & WHITELAW

By R. B. WHITELAW

Attorneys for Associated  
Farmers of Imperial  
County, and Hugh T.  
Osborne

[Endorsed]: Filed March 13, 1944. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board  
Twenty-first Region

Case No. XXI-C-1985

In the Matter of:

HOLTVILLE ICE AND COLD STORAGE COM-  
PANY; ASSOCIATED FARMERS OF IM-  
PERIAL COUNTY; and HUGH T. OS-  
BORNE

and

CHAUFFEURS, TEAMSTERS AND HELPERS,  
LOCAL 898, A. F. L.

### TESTIMONY

Room A, Barbara Worth Hotel

El Centro, California

Monday, January 25, 1943.

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:30 o'clock a. m.

Before:

Frank A. Mouritsen,

Trial Examiner.

Appearances:

Charles M. Ryan and

Robert C. Moore,

Attorneys for the National Labor  
Relations Board.

Clarence B. Smith,

212 Rehkopf Building, El Centro,  
California, appearing on behalf of  
Respondents Holtville Ice and Cold  
Storage Company; and F. A. Willard.

R. B. Whitelaw,

207-10 Rehkopf Building, El Centro,  
California, appearing for Respondents  
Associated Farmers of Imperial County,  
and Hugh T. Osborne. [1\*]

Ed Achstetter, and

A. H. Petersen,

795 Main Street, El Centro, California  
815 South Hill Street, Los Angeles,  
California, appearing on behalf of Truck  
Drivers, Warehousemen and Helpers.  
Local 898, A. F. L. [2]

Mr. Ryan: If the Trial Examiner please, I now offer to be marked for identification the formal papers upon which this proceeding rests. [9]

Mr. Ryan: I now show the documents that I have had marked for identification from 1-A through 1-S, to counsel for their examination; and I offer those documents in evidence as Board's Exhibits 1-A to 1-S, inclusive.

Mr. Whitelaw: Those documents are merely those which you have recited, are they not?

Mr. Ryan: Yes.

Mr. Smith: I would like to see that first or second one which you spoke of.

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\* Page numbering appearing at top of page of original Reporter's Transcript.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

There being no objection to the offer, the documents will be received in evidence and marked.

(Thereupon the documents referred to were received in evidence and marked as Board's Exhibits Nos. 1-A to 1-S, inclusive, respectively.)

[Printer's Note: Board's Exhibits Nos. 1-A to 1-S are set out at pages 1 to 38 of this printed record.] [15]

Mr. Ryan: Mr. Examiner, during the recess I served the Holtville Ice and Cold Storage Company Employees Association with a copy of the complaint, amendment to the complaint, notice of hearing, and a notice of continuance of hearing in this matter, and I now offer in evidence as part of the formal exhibit the acknowledgment of service signed by M. K. Stout, the secretary-treasurer of the Employees Association. I would like to have that marked next in order.

Trial Examiner Mouritsen: Board's Exhibit 1-T.

(The document referred to was marked as Board's Exhibit No. 1-T, for identification.)

Trial Examiner Mouritsen: Do you want to see this?

Mr. Smith: No.

Trial Examiner Mouritsen: Is there any objection to the offer?



Mr. Whitelaw: No objection.

Mr. Smith: No objection.

Trial Examiner Mouritsen: It is received in evidence as Board's Exhibit 1-T. [21]

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 1-T, was received in evidence.)

[Printer's Note: Board's Exhibit No. 1-T is set out at page 38 of this printed record.]  
[22]

Evening Session

(Whereupon the hearing was resumed at 5:25 o'clock, p. m.)

Present:

Mr. Ryan,

Mr. Moore,

Mr. Smith,

Mr. Whitelaw,

Mr. Achstetter, and

Russell Yeager,

District Attorney's Office,

appearing on behalf of Holtville

Ice and Cold Storage Company

Employees Association, El Centro,

California

Trial Examiner Mouritsen: By agreement of all parties we are meeting today at this time instead of at the time set at the time when we took the adjournment.

Mr. Yeager: Russell Yeager is appearing as at-

torney for the Holtville Ice and Cold Storage Company Employees Association; and I am informed that these parties have been served on the 25th day of January, 1943, and I was this day employed as counsel; and for those reasons I am asking that the case be continued at least ten days for the purpose of permitting me to prepare my case.

Trial Examiner Mouritsen: Very well. In view of the fact that the complaint was not served upon the Association until today, I am going to take an adjournment at this place until February 8, 1943, at 10:00 a. m. in the forenoon.

Do any of the other parties have anything to add?

Mr. Ryan: I haven't.

Mr. Achstetter: No, sir.

Mr. Smith: Nothing. [25]

Trial Examiner Mouritsen: Very well. The record will show that the representatives of all parties are present.

(Whereupon, at 5:30 o'clock p. m., January 25, 1943, an adjournment was taken until 10:00 o'clock a. m., February 8, 1943, at El Centro, California.) [26]

Mr. Ryan: Mr. Examiner, during the adjournment I served a Motion to Amend Complaint on the various respondents and the Employees Association involved in this matter, and now I wish to make the Motion to Amend the Complaint a part of the formal exhibit, as number next in order, and Acknowledgment of Service signed by representatives of each of the respondents and the Employees

Association and the Chauffeurs, Teamsters and Helpers, Local 898, also; make that a part of the formal exhibit.

(The documents referred to were marked as Board's Exhibits Nos. 1-U and 1-V, for identification.)

Mr. Yeager: Could I have leave to serve copies of my Answer on behalf of the Employees Association at this time?

Trial Examiner Mouritsen: Why don't you give them to Mr. Ryan and let him offer them as part of the Board's formal exhibit, too?

Mr. Whitelaw: With respect to the Motion to Amend Complaint, on behalf of the Associated Farmers and Hugh T. Osborne, we have no objection the amendment being made at this time, provided, however, that it may be deemed that on behalf of Associated Farmers and Osborne they admit the first portion of Paragraph 7-A and deny the remainder of 7-A.

Trial Examiner Mouritsen: If I understand you correctly, [30] you admit that the contract was executed on or about November 1, 1941, or some contract, and that contract or some extension thereof is still in effect?

Mr. Whitelaw: That is correct.

Trial Examiner Mouritsen: You deny it is an illegal contract and should be cancelled?

Mr. Whitelaw: That is correct.

Mr. Smith: On behalf of the Holtville Ice and Cold Storage Company the situation is the same as stated by Mr. Whitelaw. The Holtville Ice and

Cold Storage Company admits since on or about November 1, 1941, it has had a written contract with the Holtville Ice and Cold Storage Employees Association and alleges that that contract was renewed the following year, and that the Ice Company denies that the contract is illegal and should be cancelled, and all the balance of the allegations contained in Paragraph No. 7-A, except those expressly admitted.

Trial Examiner Mouritsen: I see.

Mr. Yeager, you have received a copy of the Motion to Amend the Complaint?

Mr. Yeager: Yes, sir, that is included in my Answer.

Mr. Smith: I believe I would like leave to file a written answer to that, to make the record complete.

Trial Examiner Mouritsen: You may do so. Take care of it as soon as possible. [31]

Mr. Smith: Yes, sir.

Trial Examiner Mouritsen: Is there any objection, first, to the offer of Board's Exhibits 1-U and 1-V? Have you seen them, gentlemen? You know what they are.

Mr. Whitelaw: 1-U is the amended complaint——

Trial Examiner Mouritsen: I think it is the reverse.

Mr. Whitelaw: 1-V is the Notice to Amend the Complaint and 1-U is the Acknowledgment of Service.

We have no objection except as to the—provid-



ing it is agreeable with Mr. Ryan and the union that A. F. of L. and the local are—may be filed with the provisions as stated.

Mr. Ryan: That is satisfactory.

Mr. Smith: I believe I am going to object to the allowing of the motion.

Trial Examiner Mouritsen: I am merely asking about the offer in evidence now, and then I will ask you about the motion itself.

Mr. Smith: Oh.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: No objection to the offer. The offer doesn't carry any implication that the motion is granted.

Mr. Smith: I see.

Trial Examiner Mouritsen: They will be received in [32] evidence as marked.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 1-U and 1-V, were received in evidence.)

[Printer's Note: Board's Exhibits Nos. 1-U and 1-V are set out at page 39 and page 40 of this printed record.]

Trial Examiner Mouritsen: Is there any objection to the motion to amend?

Mr. Smith: Yes. On behalf of the Holtville Ice and Cold Storage Company I am going to object to the motion to amend for this reason: The complaint is a verified complaint, is it not?

Mr. Ryan: Signed complaint.

Mr. Smith: Signed by the Chauffeurs, Teamsters and Helpers, and sworn——

Mr. Ryan (Interrupting): I think you are confusing the complaint with the charge. I see you are looking at the charge.

Mr. Smith: At any rate,——

Mr. Petersen: The complaint is signed by the Regional Director.

Mr. Smith: This amendment is signed only by the attorney. That may be your practice in the National Labor Relations Board, but in the courts the amendment would have to be sworn to the same as the complaint.

Mr. Ryan: The complaint isn't sworn to.

Mr. Petersen: The complaint isn't sworn to. The charge is sworn to but not the complaint. [33]

Mr. Smith: The complaint is signed by E. J. Eagen, Director of National Labor Relations Board. This amendment is signed by Mr. Charles M. Ryan, attorney.

Mr. Ryan: That is a motion to amend.

Trial Examiner Mouritsen: I think under our rules and regulations the complaint may be amended at any time.

Mr. Smith: Without the signature of the original signer?

Trial Examiner Mouritsen: Yes, it may be amended by the Board itself.

Mr. Smith: All right.

Trial Examiner Mouritsen: Any other objection to the granting of the motion? I will grant the motion, and in that I assume, from the acknowl-

edgment of the receipt of service, that all parties have had a copy of that motion.

Mr. Smith: I received a copy.

Trial Examiner Mouritsen: For more than ten days?

Mr. Smith: Yes, that is correct.

Trial Examiner Mouritsen: How about the Association's Answer, Mr. Ryan?

Mr. Ryan: The Holtville Ice and Cold Storage Company Employees Association has filed an Answer with me, which I now offer in evidence as part of the formal record; it will be 1-W.

(The document referred to was marked as Board's Exhibit No. 1-W, for identification.)

[34]

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Petersen: No objection.

Mr. Whitelaw: No objection.

Trial Examiner Mouritsen: Mr. Smith.

Mr. Petersen: May I say we are not objecting to offering all these things in evidence, always reserving the right of examination on them through the parties by calling the parties to the stand that have made the affidavit.

Trial Examiner Mouritsen: I understand that you are not making any waiver of that nature by your failure to object.

Mr. Smith: No objection.

Trial Examiner Mouritsen: It is received in evidence as Board's Exhibit 1-W.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 1-W, was received in evidence.)

[Printer's Note: Board's Exhibit No. 1-W is set out at page 41 of this printed record.]

Mr. Ryan: Mr. Examiner, counsel for Holtville Ice and Cold Storage Company and myself, attorney for the Board, have discussed a proposed stipulation with respect to the operations of the Holtville Ice and Cold Storage Company, and I will now make the stipulation on the record.

Mr. Whitelaw: The stipulations entered into, we wish to object to the taking of any evidence, or by stipulation, on [35] the record, on the ground the Board is without jurisdiction, it does not come within the provinces of the Interstate Commerce Act. We would like to have the *record*, if we may, our objection goes to the entire proceedings herein.

Trial Examiner Mouritsen: It will so show, and the objection will be overruled.

Mr. Smith: I suppose that is one of the issues in the case, is it not?

Trial Examiner Mouritsen: Certainly.

Mr. Smith: It is raised by our answer, and the objection is not necessary to raise——

Trial Examiner Mouritsen: On behalf of your client it is not. I mean it is one of the issues to be here determined; in order to determine that issue we have to look at the facts, so that the overruling of the objection means merely we are going forward.



Mr. Smith: Surely.

Mr. Ryan: It is stipulated by and between counsel for Respondent Holtville Ice and Cold Storage Company and counsel for the Board that Holtville Ice and Cold Storage Company is a California corporation, organized and existing under and by virtue of the laws of the State of California; that it was incorporated in February, 1926; that it has no parent company, subsidiary or branches; that the company has its office and place of business located in the [36] City of Holtville, State of California, where it is engaged in the business of manufacturing, selling and distributing ice; that the officers of the company are: F. A. Willard, President, Dave Vencill, Vice-president, and Herman Smith, Secretary and Treasurer; that the purchases of the company during the year 1941 amounted to approximately \$2400.00 per month of electric power, and that approximately \$400.00 per month represents the purchases of water during 1941; that the sales of ice during the year 1941 by Respondent Holtville Ice and Cold Storage Company amount to a total of \$111,387.42;—

Mr. Smith: Everything up until then I stipulate to. I am not sure about that figure. Mr. Willard can clarify that.

Mr. Ryan: May we go off the record?

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Mr. Ryan: Miss Reporter, will you mark this document as Board's Exhibits 2-A and 2-B?



(The documents referred to were marked as Board's Exhibits Nos. 2-A and 2-B, for identification.)

Mr. Ryan: I have had marked for identification a two page document entitled "Customers for Year 1941, Holtville Ice and Cold Storage Company." I have previously shown copies to counsel for the various respondents. [37]

Mr. Yeager: I haven't seen that.

Mr. Ryan: The document purports to set forth the list of customers for the year 1941 for Holtville Ice and Cold Storage Company, with the amount of ice sold to each customer during that period.

I offer it in evidence as Board's Exhibits 2-A and 2-B.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Smith: No objection.

Mr. Yeager: No objection.

Mr. Petersen: No objection.

Trial Examiner Mouritsen: It is received as marked.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 2-A and 2-B, were received in evidence.)

## BOARD'S EXHIBIT No. 2-A

(Copy)

## STATEMENT

HOLTVILLE ICE &amp; COLD STORAGE CO.

Telephone 31

Holtville, California, Sept. 29, 1942

## Customers for Year 1941

Date	Balance
George Averill .....	\$12089.89
Dorman Farms Co. ....	20384.32
Holtville Pkg. Co. ....	2726.69
Joe Maggio .....	13043.60
K. K. Sharp .....	46950.17
Thor Pkg. Co. ....	15266.20
V. H. Azderian .....	15.00
Cravath & Sawyer .....	3.55
C. P. Denny .....	18.40
Engebretson Grupe Co. ....	36.25
W. J. Gregg .....	2.55
Hunt Bros. Co. ....	39.70
H. U. High School .....	129.85
Holtville Groceteria .....	21.00
Threlfield Commissary .....	11.40
U. S. Bureau of Reclamation.....	2.00
B. W. Country Club .....	24.80
City of Holtville .....	12.00
Cudahy Pkg. Co. ....	270.60
George F. Johnston .....	44.60
Reid Manchester .....	10.10
Migratory Camp .....	3.60
Keith Metz .....	106.35
Ralph Myers .....	32.40
Joe Palmisano .....	13.65
S. P. Railway Co. ....	52.05
Snyder & Gregg .....	24.00
Thor Pkg. Co. ....	39.55
Mace Williams .....	10.25

## BOARD'S EXHIBIT No. 2-B

(Copy)

## STATEMENT

HOLTVILLE ICE &amp; COLD STORAGE CO.

Telephone 31

Holtville, California....., 194.....

Customers for year 1941

Number of customers served by each driver

Date	Charges	Credits	Balance
G. P. Drinard .....		40	
Tom Herring .....		1.00	
W. C. Hefner .....		1.50	

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Trial Examiner Mouritsen: Mr. Ryan, do the figures on this exhibit reach the total of \$111,-387.42 that you read?

Mr. Ryan: Yes, they do, unless my calculation is incorrect; and I don't think it is.

Miss Reporter, will you mark this document as Board's Exhibits 3-A and 3-B?

(The documents referred to were marked as Board's Exhibits Nos. 3-A and 3-B, for identification.)

Mr. Ryan: Mr. Examiner, I have had a document marked for identification as Board's Exhibits 3-A and 3-B, being [38] entitled "Customers for Year 1942, Holtville Ice and Cold Storage Company," and it purports to list the customers to whom the Holtville Ice and Cold Storage Company sold ice during the year 1942, and also sets forth the amount of ice sold to each customer in dollar

volume. I have previously shown counsel of the various respondents this document.

I will now offer it in evidence.

Trial Examiner Mouritsen: Any objection to the offer of Board's 3-A and 3-B?

Mr. Petersen. No objection.

Trial Examiner Mouritsen: It is received in evidence as marked.

(Thereupon the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 3-A and 3-B, were received in evidence.)

## BOARD'S EXHIBIT No. 3-A

(Copy)

### STATEMENT

HOLTVILLE ICE & COLD STORAGE CO.

Telephone 31

Holtville, California, Sept. 29, 1942

Customers for year 1942

Date	Charges	Credits	Balance
George Averill .....		\$13617.00	
Dorman Farms .....		24181.27	
H. P. Fites .....		10233.60	
Joe Maggio .....		17493.95	
Al Massera .....		4939.25	
Ritz Dist. Co. ....		223.50	
K. K. Sharp .....		47905.12	
Thor Pkg. Co. ....		19971.88	
L. O. Wilabee .....		15.42	
V. H. Azhderian .....		63.15	
R. W. Country Club .....		113.30	
City of Holtville .....		3.00	
Company Fund Co. A29th Engr...		2.70	
Cudahy Packing Co. ....		215.40	

Date	Charges	Credits	Balance
	Div. of Highways .....	18.90	
	Engebretson Grupe Co. ....	19.45	
	H. Grammar School .....	.50	
	W. J. Gregg .....	17.85	
	H. U. High School .....	44.30	
	Imperial Irrig. Dist. ....	30.00	
	George F. Johnston .....	57.60	
	R. C. Manchester .....	3.25	
	R. E. Meyers Co. ....	44.90	
	Fred Maurer .....	19.20	
	Keith Metz .....	41.25	
	S. P. Railway Co. ....	37.50	
	K. K. Sharp .....	24.90	

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### BOARD'S EXHIBIT No. 3-B

(Copy)

## STATEMENT

HOLTVILLE ICE &amp; COLD STORAGE CO.

Telephone 31

Holtville, California....., 194.....

Customers for year 1942

Number of customers served by each driver

Date	Charges	Credits	Balance
	G. P. Drinkard .....	.56	
	Tom Herring .....	1.10	
	W. C. Hefner .....	1.19	

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Mr. Ryan: During the year 1941, among the customers who purchased ice from the Holtville Ice and Cold Storage Company, were six vegetable packing companies, doing business in Holtville, California, and the total amount of ice shipped to



those—sold to those packing companies during the year 1941 amounted to \$110,460.87.

Mr. Smith: They are included——

Mr. Ryan: They are included in Board's 2-A and 2-B.

Trial Examiner Mouritsen: 3-A and 3-B.

Mr. Ryan: Yes, 3-A and 3-B. There is a slight change. [39]

Trial Examiner Mouritsen: You gave it for the year 1941?

Mr. Ryan: Yes. The names of the companies are the first six customers named in the document, on Board's Exhibit 2-A. They are the companies listed in Board's Exhibit 3-A, the first customers listed, with the exception of the last, which follow the name of Ritz Distributing Company, which is not included in that group; otherwise they would represent the first seven customers appearing on Board's Exhibit 3-A.

The total amount of ice sold during 1942 to those customers was—eight vegetable packing companies—amounts to \$138,342.07.

The total sales of ice for 1942 to all the customers who are listed on Board's Exhibits 3-A and 3-B amounts to \$139,339.99.

Those vegetable packing companies listed as customers in Board's Exhibit 3-A are also all engaged in the vegetable packing business in Holtville, California.

It is further stipulated that the ice which was purchased by the vegetable packing companies listed in Board's Exhibits 2-A and 3-A was used in the

packing of vegetables and the icing of railroad cars in which those vegetables were shipped, during the years 1941 and 1942.

Mr. Smith: I think it would be probably more correct to say a substantial part of that ice was used that way. [40]

Mr. Smith: I might state for the record Mr. Ryan requested that we obtain from the various shippers of produce the number of cars that went out of the state.

Trial Examiner Mouritsen: Are these the same?

Mr. Smith: Same shippers.

Trial Examiner Mouritsen: Same shippers.

Mr. Smith: 2-A and 3-A.

Mr. Ryan: Referred to as vegetable packing companies.

Mr. Smith: I explained to him the big majority of these cars are sold f.o.b. by the packer in Holtville, but he wanted the ultimate destination of the cars and in many instances I did not know exactly but I assumed the greater percentage went out of the state.

Mr. Ryan: In some instances you say that is true and in others——

Mr. Smith: For instance, some of the shippers specified that the big majority of their cars were sold f.o.b. in Holtville to some buyer and then learned then that ultimately those cars did leave the state. I am willing to stipulate that more than fifty per cent of the cars packed with this ice furnished by the Holtville Ice and Cold Storage Com-

pany did ultimately leave the state. Is that sufficient?

Mr. Ryan: Yes. Now the only thing we have left is as to the approximate number of cars. It was further [42] agreed between counsel for the various respondents, I believe,—correct me if I am wrong—and myself, attorney for the Board, in lieu of calling the representatives of these various packing companies we would agree that a letter from those individuals would be acceptable in evidence, in lieu of testimony.

Trial Examiner Mouritsen: The stipulation, also to the effect that the subject matter contained in the letters, is accepted as true statements of the matters that they contain?

Mr. Smith: Wouldn't it be sufficient for all purposes to stipulate that over fifty per cent of the cars packed with ice from the Ice Company did ultimately leave the state, a total of some 2,812 cars.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Mr. Ryan: That was for 1942?

Mr. Smith: Packed 1942 shipments.

Mr. Ryan: Vegetable packing customers. I will stipulate that as approximately the total number of cars; vegetables that were packed by them. Now as to the percentage of that number that went out of the state, shipped out of the State of California. What percentage can we agree on?

Mr. Smith: More than fifty per cent were ultimately [43] shipped out of the state by the purchasers of the packed cars.

Mr. Ryan: Would you go as far as saying seventy-five per cent?

Mr. Smith: I think.

Mr. Ryan: It is further stipulated that at least seventy-five per cent of those cars were shipped out of the State of California by the purchasers.

Mr. Smith: Not by the packer.

Mr. Ryan: Not by the packer. I understand they were sold f.o.b. at the packing plant,——

Mr. Smith: The big majority were.

Mr. Ryan: ——out of the State of California.

Trial Examiner Mouritsen: Very well. Is that all the stipulation?

Mr. Ryan: I think that completes it. [44]

Mr. Ryan: It is further stipulated that the total number of cars of vegetables packed by the vegetable companies who are customers of Holtville Ice and Cold Storage Company were about the same in 1941 as they were in 1942, and that the proportion which went into interstate commerce and left the State of California were about the same proportion, approximately seventy-five per cent.

Trial Examiner Mouritsen: Do you propose to cover in your stipulation the power and water used in 1942?

Mr. Ryan: I would rather get that from Mr. Willard in his testimony.

Trial Examiner Mouritsen: Very well. Gentlemen, do you have the stipulation in mind?



Mr. Smith: Yes. I stipulate to the matter stated by Mr. Ryan.

Mr. Ryan: I would like to now call Mr. Willard to the witness stand, please.

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F. A. WILLARD

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [45]

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please?

A. F. A. Willard.

Q. And what is your address?

A. Holtville, California.

Q. What is your occupation, Mr. Willard?

A. I am president of the Holtville Ice and Cold Storage Company.

Q. How long have you held that position?

A. Since the organization started.

Q. What, in general, are your duties as president? That is, with regard to the operation of the company's business?

A. I have the active management of the company.

Q. Are you on the job more or less all the time——

A. Yes.

Q.—at the plant?                      A. Yes.



(Testimony of F. A. Willard.)

Q. Are you in close contact with the actual operations of the business and the work of the employees on the job? A. Yes.

Q. Give us a brief description of the plant facilities indicating the size of the plant and the—a description of how the plant operates.

A. As of what date?

Q. Well, beginning in 1941. [46]

A. Well, in—for the vegetable season in 1941 the plant was—plant power was made by Diesel engines, and the capacity of the plant was approximately 150 tons of ice a day.

Q. Before we get into that, will you tell us, first, approximately how much ground is involved in this plant site where you have your plant in Holtville?

Mr. Whitelaw: Just a minute. Why these questions, Mr. Ryan?

Mr. Ryan: I think they will be helpful in giving the Board or whoever has to read the record a clear picture of the nature of the plant involved in this particular matter, and as far as the bargaining unit would be concerned it would also be helpful for anyone to know how big the plant is, whether the employees work in a closely knit plant or whether they are scattered all over the countryside; I think it would be helpful for that reason.

Mr. Whitelaw: I have no objection then, if that is the purpose.

A. The ground area covered by the plant would be approximately 200 by 300 feet.

(Testimony of F. A. Willard.)

Q. Is there more than one building on that property?      A. Yes.

Q. Describe the size of the various buildings and tell us what they are used for. [47]

A. The manufacturing plant, the manufacturing part of the plant would be approximately a hundred—approximately 50 by 200.

Q. And is it a one-story plant?

A. Yes. That part of the plant—yes, one-story. Then there is a storage room, that is 100 by 200, and 40 feet high.

Q. And is that connected with this first manufacturing plant?

A. Yes. Then there is a day room which is a small room, and the office.

Q. Now, will you give us a brief outline of the manufacturing process as it affects the production of ice, how is it manufactured, briefly? Starting with the first operation and carrying it on through until your ice is manufactured.

A. Well, first we have what we call a freezing tank and then separate from that we have a water treating tank. The freezing tank is cooled or refrigerated by ammonia coils in the tank, and there is a space in the tank to receive cans. The treated water is put in these cans, the cans are loaded in the tank and remain there until the ice is frozen; the water is frozen.

Q. Then after it is frozen, what happens to it?

A. The cans are taken out and the ice dumped

(Testimony of F. A. Willard.)

out of them and refilled with water and put back in the tanks.

Q. After the ice is dumped out of them, what happens to the [48] ice that has been frozen?

A. Goes on a conveyor and is carried to storage.

Q. What happens to it after it is in storage?

A. Well, the sales start. The ice comes out of the storage on conveyors, out onto the platform, from there it is loaded on trucks and delivered to vegetable shippers.

Q. What employees do the first operation for the—in the manufacture, as you have just described it? What do you call them?

A. Ice pullers.

Q. Ice pullers?

A. Yes.

Q. Is that the first operation that the employees perform in the manufacture of ice in your plant?

A. Yes.

Q. How about the filling of these tanks with water, to start with?

A. They do all of that.

Q. The ice pullers do that, also?

A. Yes.

Q. And approximately how many ice pullers do you have? How many did you have in 1941?

A. Three regular ice pullers, and a relief man.

Q. How many did you have in 1942, Mr. Willard?

A. Same number. [49]

Q. How do they go about pulling the ice? Will you describe that term to us a little bit?

A. The ice is pulled with a hoist on a traveling crane and the ice puller rides on the crane, runs the

(Testimony of F. A. Willard.)

crane over a set of cans he is going to pull and raises those cans up and carries them to the dip tank, which melts the ice and frees it from the cans and sets it in the dump and the dump tips over and the ice goes out on the conveyer, tips it back and fills with water and puts it back in the tank.

Q. The cans set down in a sort of a grille-like in the floor, that is where it is frozen? A. Yes.

Q. The conveyor is—goes along—

A. There is a group of twelve cans in what we call a frame, and he goes along and picks up the cans, the crane picks up the frame with the twelve cans.

Q. After the ice handlers are through with their occupation, who are the next group of employees to take charge of the ice?

A. In the storage room.

Q. What are those employees called?

A. They have no title, they are employed in the storage room.

Q. And approximately how many of them were there in the employ of the company in 1941?

A. When we are just storing ice, before the sales start, [50] there are three in the storeroom, and the relief man. They store the ice away in the room, and after the sales start, then there are additional men put on, depending on the sales, the volume going out.

Q. And during the peak of the season when you have the normal crew for a busy season, how many would you have of those employees, approximately?



(Testimony of F. A. Willard.)

A. The crew on the tank, the ice pullers wouldn't change, that is constant. The ice going out of the room varies, and—varies with the volume of the sales, they would have the three regular men in the storage and probably three or four extra men, and then there would be two or three men on the platform.

Q. Now, these men that work in the storage room, I understand when the ice comes in they put it around and store it in the storage room?

A. Yes.

Q. Place it around?           A. Yes.

Q. When the sales begin, as you have indicated, the ice is taken out of the storage room, out onto the platform. Who does that work?

A. The men in the storage room.

Q. Are there any other men on the platform who handle the ice, besides the storage men? [51]

A. None more than the crew I mentioned.

Q. That would be the next men to take over, would be the truck drivers?

A. Yes, that is correct.

Q. And who are those truck drivers, are they employees of the company?           A. Oh, yes.

Q. How many of those are there, Mr. Willard?

A. Ordinarily about three. The number of those vary with the volume of sales, too.

Q. What do those truck drivers do, where do they take the ice?

A. They take the ice from the platform to the packing houses.



(Testimony of F. A. Willard.)

Q. These are the vegetable packing companies we have been previously talking about?

A. Yes.

Mr. Whitelaw: I suggest instead of using the word "companies"—they are all not companies, some of them are individuals. That is correct, Mr. Willard?

The Witness: Yes.

Trial Examiner Mouritsen: That is correct, some of them are individuals, rather than companies or corporations?

The Witness: Not on vegetable ice, no. In the summer, during the sale of the domestic ice, then the drivers, at that time, buy the ice on the platform and deliver it themselves. [52]

Trial Examiner Mouritsen: The question was—these packing companies or packing sheds—are some of them individuals, rather than companies or corporations, to your knowledge?

The Witness: I didn't get the question quite clear.

Trial Examiner Mouritsen: Some of these customers that have been designated as the vegetable companies or sheds, do you know whether some of them are individuals, rather than companies?

The Witness: No, I couldn't answer that.

Q. (By Mr. Ryan): Now, Mr. Willard, have we mentioned all the classifications of employees that are engaged in the manufacture of ice at your plant?

A. Yes, sir.

Q. Do you have other employees, other than those

(Testimony of F. A. Willard.)

that you have mentioned, that are engaged in any operation at your place of business?

A. Some in the office, yes.

Q. Office employees? A. Yes.

Q. Approximately how many of them are there?

A. Two.

Q. Two? A. Yes.

Q. And does that complete the total number of employees you [53] have? A. Yes.

Mr. Smith: I don't believe that is clear to Mr. Willard. When he had the Diesel plant, I think he had engine room employees.

Trial Examiner Mouritsen: I understand from the answer that there is some contention with reference to a change in the nature of operations. Perhaps your question might not be clear enough on the basis, or time before the change.

Q. (By Mr. Ryan): Mr. Willard, the description of the plant operations you have just given us refers only to 1942? A. Yes, sir.

Q. Did you have reference to previous years?

Trial Examiner Mouritsen: Does it refer also to 1941, so far as the ice manufacturing operations are concerned?

The Witness: That is true.

Trial Examiner Mouritsen: Were the number of employees practically the same in the ice operations in 1941?

The Witness: Yes, sir.

Q. (By Mr. Ryan): Now, how frequently is the ice delivered to these vegetable packing customers during the season?

(Testimony of F. A. Willard.)

A. Excuse me. I think we ought to clear up the point you bring out. The description I gave you was the operation of the plant under electric power. Now, the operation of the plant before we installed electric power was quite different. [54]

Q. You might indicate the change and how it operated under Diesel power.

A. The Diesel department was eliminated entirely. We had six Diesel engines that required three operators and a relief man and two maintenance men; that part has all been eliminated with electric power.

Q. Removed the Diesel engines, have you, and replaced them with electric motors? A. Yes, sir.

Q. How many electric motors did you install?

A. There are six main electric motors now.

Q. Who takes care of the electric motors?

A. They take care of themselves.

Q. Do you have anyone who maintains them?

A. No.

Q. Who starts them and stops them?

A. They are started in the fall and shut down the next summer.

Q. They run continuously during the season?

A. Yes.

Q. Now, this ice season of yours, does it continue all during the twelve months of the year or are there certain months you consider to be your ice season?

A. Well, we start making vegetable ice around the latter part of October or early November and

(Testimony of F. A. Willard.)

that ice goes into [55] storage until our sales equal or are greater than our manufacturing capacity, then we take it out of the storage.

Trial Examiner Mouritsen: Before you go into that, Mr. Ryan, when did this change-over from Diesel to electric power take place?

The Witness: That was in the summer of 1941.

Trial Examiner Mouritsen: Can you fix that time any more definitely than that.

The Witness: Well, it was at the close of the vegetable season, which is around about the latter part of June or early in July. The plant was shut down, as soon as we shut down we started to make the change and that change was completed some time in October.

Trial Examiner Mouritsen: You have called it a change from Diesel to electric power?

The Witness: Yes.

Trial Examiner Mouritsen: The Diesel engines generated electricity?

The Witness: Yes.

Trial Examiner Mouritsen: The source of your electricity is from some other source rather than your own?

The Witness: Yes.

Q. (By Mr. Ryan): I don't believe, Mr. Willard, that you set the exact season in which your business is operating fully during the year, naming the month it begins and the [56] month when it ends.

A. We start up in the fall, some time about the



(Testimony of F. A. Willard.)

latter part of October or early November, and start making ice and that ice goes into storage until our sales more than equal our manufacturing output, and that happens usually around the middle of January. And at that time we begin taking what we call the surplus ice out of the storage and our sales will continue until some time the latter part of June; that is all on vegetable ice. And from June, for the balance of the year, we sell a small amount of domestic ice.

Q. Then during the months from June to October, about October in the fall, when you start operating heavily again, do you retain your full crew of employees between June——

A. (Interrupting): No.

Q. Just approximately how many employees do you retain during that off season?

A. The only employees that we retain during that period would be men that we would be using on maintenance work, preparing the plant for another season's run and that number would vary, sometimes it is two or three, might be a half a dozen or it might be eight.

Q. These men you refer to as using on maintenance, during the heavy season were they used as maintenance men?

A. As far as possible, yes.

Q. I didn't understand you to name any maintenance men in your [57] classifications in describing the manufacturing operation previously. Do you have any classification of employees in your plant



(Testimony of F. A. Willard.)

that are designated as maintenance men who do that work all the time?

Mr. Smith: What time do you refer to?

Mr. Ryan: All the time.

Mr. Smith: 1941 or 1942?

Mr. Ryan: 1941 and 1942.

A. In 1941 we had men that were on maintenance.

Q. (By Mr. Ryan): What did they do?

A. Principally maintenance on the Diesel engines.

Q. Are they the same men you previously referred to as operators of the Diesel engines?

A. No.

Trial Examiner Mouritsen: I think the witness referred to some maintenance.

Mr. Smith: Yes, the witness referred to three operators and a relief operator and some maintenance help.

Trial Examiner Mouritsen: Two was the figure that occurred to me.

Q. (By Mr. Ryan): Do you have any maintenance men now?

A. No, sir.

Q. During this past summer, did you keep any men on in the employ of the company from June to August?

A. Yes, sir. [58]

Q. Or October?

A. Yes.

Q. What did they do?

A. General repair and maintenance work around the plant.

(Testimony of F. A. Willard.)

Q. The men you have recently, during this past year, been using as maintenance men in the summer-time, during the normal season those men would be doing other jobs in the plant?

A. That is right.

Q. That is what I am trying to get at.

A. Yes.

Trial Examiner Mouritsen: How many men did you keep on for maintenance work during this last summer?

The Witness: I don't believe I could tell you that; Mr. Smith could probably give you the accurate figures on that.

Trial Examiner Mouritsen: What is your best recollection, was it one or five or ten?

The Witness: Probably four.

Q. (By Mr. Ryan): In previous years while you still had the Diesel power approximately how many men did you keep on in the summertime, Mr. Willard?

A. Well, it would be the same amount.

Q. Three or four? A. Yes. [59]

Q. Did you ever, on any occasion, keep on employees during the summer who, during the actual season, had been engine operators?

A. Yes, operators could do the maintenance in summer the same as anyone else.

Q. Did you sometimes keep on truck drivers in the summertime?

A. The truck drivers would be busy on their trucks in the summer.

(Testimony of F. A. Willard.)

Q. There were some employees, were there not, Mr. Willard, while you had the Diesel engines, who worked the year around for you, who were other than actual maintenance men?

A. That is probably so, but they would have more maintenance work to do on the engines than they have now, you see.

Trial Examiner Mouritsen: Have you used some of the ice pullers and men in the warehouse for that maintenance work, in past years, during the summer periods?

The Witness: Well, that is probably true, we did, but a maintenance man was selected for his ability to do the work we had to do, whether he came from the storeroom or the tank room or was an engine operator.

Q. (By Mr. Ryan): During the season when these vegetable packing customers are operating their sheds, how frequently are the deliveries of ice made from your plant to the individual customer's sheds?

A. Well, I couldn't very well answer that. It all depends on [60] their sales. When they want a load of ice their iceman phones up to us and orders a load of ice, and we take it down. They might ship one car today and ten cars tomorrow and they would order their ice in proportion.

Q. Do these vegetable packing customers have any storage facilities at the sheds?

A. None whatever.

(Testimony of F. A. Willard.)

Q. In other words, they are packing the vegetables in the sheds, you have to keep bringing the ice over in the quantities they need for the packing they are doing at the moment? A. Yes.

Q. Deliveries are made practically all during the vegetable packing season from your plant over to the sheds, are they not?

A. Deliveries are made every day the packing house is running. Sometimes one packing house is shut down and the others might be all running.

Trial Examiner Mouritsen: Mr. Ryan, in your question you asked about the season. You mean this period other than from, say, June to October?

Mr. Ryan: I will ask him when the vegetable season actually gets under way and approximately how long it continues.

Q. (By Mr. Ryan): Could you answer that?

A. It usually starts the latter part of December, gets up to a peak usually in February and is over some time the [61] latter part of June.

Q. June? A. Yes.

Q. And during this period, from December up until the latter part of June, you are making deliveries every day that any of these vegetable customers are operating; you are making deliveries of ice to that customer every day he operates?

A. That is true, yes.

Q. Now, Mr. Willard, these packing sheds that are used by these vegetable packing customers of yours, can you tell us who owns them?

A. The company owns them.



(Testimony of F. A. Willard.)

Q. The Holtville Ice and Cold Storage Company owns those packing sheds? A. Yes.

Q. Do you have a lease with each one of the vegetable packing customers for the use of the sheds? A. Yes, sir.

Q. Is there any provision in that lease agreement that provides that the lessor shall—lessee, I believe it is, shall receive his ice from the Holtville Ice and Cold Storage Company? A. Yes, sir.

Q. That is true of each of the vegetable packing companies, customers you supply ice to?

A. All except one. [62]

Q. Which one is that?

A. There is one that owns the—a Jap shed, but we do not own it, we have the handling of the shed.

Q. But you have a lease providing you supply them with ice? A. Yes, sir.

Q. Which one is that?

A. That is Massera.

Q. Where are these vegetable packing sheds located with respect to the railroad in the City of Holtville?

A. Well, they are located right along the railroad, right through town.

Q. What railroad is that?

A. Holtville Interurban.

Q. Pardon?

A. Holtville Interurban; that might be the Southern Pacific now.

Trial Examiner Mouritsen: You have a pretty

(Testimony of F. A. Willard.)

good idea it is a branch or subsidiary of the Southern Pacific?

The Witness: I understand it is owned by the Southern Pacific, but operates as the Holtville Interurban.

Trial Examiner Mouritsen: Does the contract provide they receive their ice exclusively from the Holtville Ice Company?

The Witness: Yes.

Trial Examiner Mouritsen: What do they do, run the cars [63] right up beside the sheds and the ice is loaded with vegetables and ice at the same time?

The Witness: Well, each shed has its own siding and the shed is so located that when a car comes up the vegetables—crates of vegetables can be loaded from the packing house right into the car. And on the opposite side of the packing house is the driveway for the trucks, the vegetables come in on trucks and the ice also comes in in the same driveway.

Q. (By Mr. Ryan): And as a rule almost as soon as a car is spotted in front of a packing shed it is filled to capacity with vegetables and it is then taken out and sent on its way? A. Yes.

Q. There is a constant movement of cars into the sheds and away from the sheds with their load of vegetables?

A. I wouldn't say a constant movement, usually they switch cars about twice a day. Each packing shed will order the number of cars they think they

(Testimony of F. A. Willard.)

will use that day and they switch them in at one time.

Q. When they are all filled they switch them back out again? A. That is it.

Q. Mr. Willard, getting back to this change-over from Diesel power to electrical power, when that change-over was made was some reconstruction of your plant necessary? [64]

A. Yes,—well, not necessarily, we did make some—made an addition to it.

Q. And in order to do that construction work did you use your own employees or did you employ others to do that for you? How did you handle that?

A. Part of it was handled on a contract and part we did ourselves.

Q. And so far as that handled on a contract was managed, what employees did that work?

A. That contract was handled through the York Machinery Corporation.

Trial Examiner Mouritsen: How do you spell that?

The Witness: Y-o-r-k.

Q. (By Mr. Ryan): And where is that company located? A. Los Angeles.

Q. What type of business are they engaged in, solely construction work?

A. No, refrigerating and ice making machinery.

Q. Did they bring down employees to work on that construction? A. Yes.

Q. How long did that construction take?

(Testimony of F. A. Willard.)

A. I think they started on that some time early in August, and completed it, I think, in early November.

Q. 1941? A. Yes, sir. [65]

Q. Some of your employees worked along with these contract men on that construction job, is that right? A. Yes.

Q. Mr. Willard, are you familiar with an organization known as the Associated Farmers of Imperial County? A. Yes.

Q. Can you tell us whether or not the Holtville Ice and Cold Storage Company is a member of that association? A. They are.

Q. Mr. Willard, does your company, as a member of the association, make contributions or pay membership fees to that? A. Yes.

Q. When did the company first become a member of the association?

A. Well, I don't recall that, but it was several years ago.

Trial Examiner Mouritsen: Before 1941?

The Witness: Yes.

Mr. Smith: I think it was in 1936.

Mr. Ryan: Miss Reporter, will you mark that document as Board's next in order for identification, please?

(The document referred to was marked as Board's Exhibit No. 4, for identification.)

Mr. Ryan: Mr. Examiner, I have had marked for identification a document bearing the name "Holtville Ice and Cold [66] Storage Company",



(Testimony of F. A. Willard.)

dated "September 29, 1942," entitled "Contributions to Associated Farmers." I show copies to counsel for the various respondents.

Off the record, please.

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

Mr. Smith: I will stipulate that the exhibit shows the contributions to Associated Farmers by Holtville Ice and Cold Storage Company commencing in the year 1936.

Mr. Ryan: I offer Board's Exhibit 4 in evidence.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Petersen: No objection.

Trial Examiner Mouritsen: Let me ask if these contributions were to the Associated Farmers here involved, Associated Farmers of Imperial County?

Mr. Smith: That is right.

Trial Examiner Mouritsen: Does this represent all the contributions?

Mr. Smith: Yes.

Trial Examiner Mouritsen: The document will be received in evidence as Board's Exhibit 4.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 4, was received in evidence.) [67]

(Testimony of F. A. Willard.)

BOARD'S EXHIBIT No. 4

(Copy)

HOLTVILLE ICE & COLD STORAGE CO.

Holtville, California

September 29, 1942

Contributions to Associated Farmers

Month	Journal Page #	Voucher #	Amount
November 1936	878	11-52	\$250.00
March 1938	22	2-32	1.00
January 1939	102	1-52	250.00
December 1939	187	12-54	250.00
April 1941	317	4-4	250.00
November 1941	374	11-50	150.00
February 1942	397	2-04	150.00
February 1942	397	2-09	5.00

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Q. (By Mr. Ryan): Mr. Willard, are you familiar with the circumstances surrounding the occasion of the Holtville Ice and Cold Storage Company becoming a member of the Associated Farmers of Imperial County? Tell us how that came about, if you know.

A. Yes, I think so. Associated Farmers, I think I came in contact with them first in 1936, and at that time they were very active in combating subversive activities in the valley, and I don't know whether they were organized at that [68] time. Anyway, they were putting on a drive at that time and I contributed to it, and have every year since.

Q. Did anyone approach you from the Associated Farmers first or did you go to them?

(Testimony of F. A. Willard.)

A. They approached me, they were making a drive over the whole valley.

Q. Who approached you?

A. I think it was Mr. Osborne.

Q. Where did you see him on that occasion?

A. He came to my office.

Q. Did he have a conversation with you about your company becoming a member at that time?

A. Yes.

Q. Was anyone else present, other than you and Mr. Osborne?      A. I don't recall there was, no.

Q. Will you give us the substance of that conversation, what you said and what he said?

A. He just reviewed what the Associated Farmers stood for and what they were doing, which I was already familiar with. It was a non-profit organization and the only way they had of existing was through membership and contributions. He asked me to contribute, which I did.

Q. Did he make any statement as to what the Associated Farmers stood for on that occasion?

A. I presume he did. [69]

Q. Do you remember what he said in regard to that?      A. No, I couldn't remember that.

Q. Did he give you any document or anything on that occasion of the Associated Farmers?

A. I don't recall he did, no.

Q. Thereafter, did you have occasion to talk to Mr. Osborne?      A. Oh, yes.

Q. As a representative of the Associated Farmers?      A. Yes, several times.

(Testimony of F. A. Willard.)

Q. Approximately how often thereafter, in a period of a year, from year to year, did you have occasion to talk to him?

A. I couldn't say, maybe see him once a year, maybe oftener.

Q. Would he come to your plant to talk to you on those occasions?

A. Sometimes I would see him at the plant or sometimes I would see him on the street and sometimes I would see him in El Centro.

Q. Did you go to him with any problems you had?

A. No, I didn't, only in the fall of '41. I came back and found there was some union activities in the plant, and I phoned him, asked him what was going on, and asked him if he knew about it, and he told me he did, he knew all about it. And he said in a few days he would be over and see me.

Q. Approximately when was it that you called him, can you fix the month, approximately, and approximately what time [70] in the month it was?

A. It was either the latter part of September or in October along there somewhere.

Q. 1941?            A. Yes.

Trial Examiner Mouritsen: We will take a short recess.

(A short recess was taken.)

Trial Examiner Mouritsen: The hearing will be in session.

Q. (By Mr. Ryan): After you called Mr. Osborne, as you have just indicated, Mr. Willard, did



(Testimony of F. A. Willard.)

he then come to your plant in a few days, as he said he would?      A. Yes.

Q. On that occasion was anyone present, other than you and Mr. Osborne?

A. I don't recall that there was, no.

Q. Will you give us the substance of your conversation at that time, what you said and what he said, what you discussed?

A. I asked him what was going on, and he said for some time past there had been special union activities in the valley and told me that the A. F. of L. was trying to organize all the ice companies, and that they were working on it.

Q. Who was working on it?

A. The Associated Farmers.

Q. Did he tell you what they were doing in that regard?

A. No, I don't recall that he did. [71]

Q. What else was said, if anything?

A. I asked him what I should do on it, and he said I couldn't do anything.

Q. What else? Was there anything else?

A. That about covers it, I believe.

Q. Did he indicate he would do anything?

A. No, I wouldn't say that he did indicate that he could do anything for me specifically; that they were working on the general situation, see it didn't get out of hand.

Q. The Associated Farmers were?

A. Yes.

(Testimony of F. A. Willard.)

Q. Now, Mr. Willard, you are familiar, are you not, with an organization among your employees known as the Holtville Ice and Cold Storage Employees Association? A. Yes, sir.

Q. It is true, is it not, Mr. Willard, that since November 1st, or about that date, 1941, up to the present time you have been under contract with that association? A. Yes, that is true.

Q. Employees Association. Covering hours, wages and other working conditions?

A. That is true, yes, sir.

Mr. Ryan: Miss Reporter, will you please mark that document as Board's exhibit next in order, for identification?

(The document referred to was marked as Board's Exhibit No. 5, for identification.) [72]

Q. (By Mr. Ryan): The contract which has been in existence between the Association of Employees and the company since November 1, 1941, covers what group of employees?

A. All of them.

Q. All of the employees? A. Yes.

Q. Including office employees?

A. No, I don't believe it does include the office.

Q. All except office employees? A. Yes.

Q. I presume the contract will speak for itself. Sometimes they don't too plainly. That is the reason I asked that question. Mr. Willard, will you explain the supervisory system that exists in your plant? That is, what supervisors do you have there over the men?

(Testimony of F. A. Willard.)

A. There is one man in the plant that has charge of the plant and the storeroom. There is another man—— [74]

Q. (Interrupting): What is his title?

A. Superintendent.

Q. Who is he? A. Pete Pool.

Q. And how long has he been superintendent, approximately?

A. Oh, approximately four or five years.

Trial Examiner Mouritsen: Is his name correctly spelled in the complaint? P-o-o-l, is that right?

The Witness: Yes. There is another man that has charge of the ice on the platform and the delivery of ice, Tom Herring.

Q. (By Mr. Ryan): Who does the hiring and firing?

A. Well, each superintendent handles their own men.

Trial Examiner Mouritsen: Who is the second man?

The Witness: Tom Herring.

Trial Examiner Mouritsen: H-e-r-r-i-n-g?

The Witness: Yes.

Q. (By Mr. Ryan): What is his title, Mr. Willard? A. He doesn't have a title.

Q. But he is a supervisor, none the less?

A. Yes.

Q. Does he exercise the same duties of supervision over the storeroom as—or over his particular group of employees as Mr. Pool does over his?

(Testimony of F. A. Willard.)

A. Yes. [75]

Q. He hires and fires those men? A. Yes.

Q. How long has he held that position?

A. He started in the spring of '42, I think it was.

Q. Had you previously had a man on that job?

A. Yes.

Q. Who was that? A. Roy Davis.

Q. Roy Davis? A. Yes.

Q. How long had Mr. Davis been in that position?

A. Well, in that position probably three or four years, but he had been in many other positions in the plant.

Q. What had Mr. Herring been—what type of employee had he been previous to obtaining this position in the spring of 1942?

A. He had worked out of the office on collections and complaints and also handled one of our trucks.

Q. How long has he been employed by the company, approximately?

A. Well, I would make a guess at ten years.

Q. Mr. Willard, do you know where the electric power which is used by the company in the operation of its plant, where it is generated?

A. I know some of it is generated in the Sierra Mountains. I would suspect all of it is generated there. [76]

Q. Boulder Dam?

A. Well, I guess they do get some from Boulder Dam.



(Testimony of F. A. Willard.)

Q. Where in the Sierra Mountains do you have reference to?      A. I couldn't tell you that.

Q. Here in California, or Nevada?

A. California.

Q. Is that a generating plant in the Sierra Mountains, or relaying plant?

A. Generating.

Q. Generating?      A. Yes.

Q. Where does the company obtain the water which it uses in the operation of the plant?

A. Irrigation—no, we get it in the City of Holtville; they get it from the irrigation district.

Q. What irrigation district is that?

A. Imperial Valley.

Q. Where does that organization get its water from?      A. Colorado River.

Q. How is that water transported in here from the Colorado River?      A. Comes in a canal.

Q. American Canal.

A. All American Canal.

Q. Do you know where it begins? [77]

A. It begins up the river from Yuma.

Q. Arizona?      A. No, California.

Trial Examiner Mouritsen: It ends where? It ends in the Imperial Valley?

The Witness: Yes.

Q. (By Mr. Ryan): Runs into the Colorado River, does it not? I mean it runs out of the Colorado River?      A. Out of the Colorado, yes.

Mr. Ryan: I have no further questions of Mr. Willard at this time.

(Testimony of F. A. Willard.)

Cross Examination

By Mr. Smith:

Q. That water is taken from the bank of the Colorado River in California and transported directly by canal system into Holtville, is it not, Mr. Willard? A. Yes, it is.

Q. And insofar as you know is any of the electricity you use generated out of the state?

A. I don't know that it is, no.

Q. Now, have you ever been up Leeving Creek?

A. Yes.

Q. Power plant operated by the power company? A. Yes, I have.

Q. That is in California, is it not?

A. Yes. [78]

Q. Whatever electricity the irrigation district develops is by Diesel engine in the valley or by drops in the canal in this county, is it not?

A. That is true.

Q. Or do you buy any electric power from the irrigation district?

A. No, I don't get any electric power from them at all.

Q. Now, Mr. Willard, prior to the time you changed from Diesel power to electric power, I want you to make it just as clear as you can for the record, as to what employees you had that were in any way engaged in operating or maintaining the Diesel engines, equipment, that was used to generate electricity to run the ice plant prior to the late summer of 1941.

(Testimony of F. A. Willard.)

A. Well, we operated at that time a Diesel engine plant that generated electric power to run the ice plant. We had six Diesel engines, two of them driving electric generators and the other three directly connected or belted to compressors; now, to operate those you require three regular Diesel enginemen, a relief man and two maintenance, sometimes three maintenance men.

Q. These three men, would that be one man on each shift for three eight-hour shifts?

A. Yes.

Q. All right, go ahead.

A. That constituted what you might call the power department of [79] the plant. Now, when we changed to electricity, electric drive and power, our electric plant, that department was eliminated entirely.

Q. And did you cause to be prepared, at my request, a pay roll record showing pay roll periods ending January 15, 1941, January 15, 1942, January 15, 1943?

A. I did.

Mr. Smith: Will you mark these, please?

(The documents referred to were marked as Respondent Ice Company's Exhibits Nos. 1-A, 1-B and 1-C, for identification.)

Q. (By Mr. Smith): Now, Mr. Willard, referring to the pay roll period ending January 15, 1941.

Trial Examiner Mouritsen: Marked as what, for identification?

Q. (By Mr. Smith): What is marked Exhibit 1-A, for identification. I will ask you to state if

(Testimony of F. A. Willard.)

that pay roll shows the names of the men that were engaged in the engine room and on maintenance?

A. Yes, that is true.

Mr. Ryan: 1941, Mr. Smith?

Mr. Smith: Yes.

The Witness: '41.

Q. (By Mr. Smith): It contains the names of M. K. Stout, H. G. Miller, E. S. Jones and H. T. Pool; engine maintenance, M. Wooldridge, and L. C. Hart? [80] A. Yes.

Q. Now, that showed a total of how many men on your pay roll January 15, 1941?

A. Twenty-two men.

Q. Now, going to Exhibit 1-B, for identification, which is the pay roll period ending January 15, 1942,—Let me ask you, first, if your volume of business was just as great or greater in 1942 than it was in 1941?

A. It was greater. '41, up to that time we had delivered 1151 tons of ice, and January, '42, we delivered 1871 tons of ice.

Q. That is written on the exhibits?

A. Yes.

Q. How many did you have on the pay roll on January 15, 1942? A. Fourteen men.

Q. As against twenty-two the year previous?

A. Yes.

Q. And how was it that you could get along with the lesser number in 1942?

A. Because the engine room crew were elim-



(Testimony of F. A. Willard.)

inated entirely, six men went out of the engine room crew.

Q. You did, however, in 1942, use at least one man, M. K. Stout, that had been in the engine room, in another capacity in 1942, did you?

A. Yes. [81]

Q. I see he is in the tank room in 1942.

A. Yes, sir.

Q. Following that up a year later, Mr. Willard, you have there in Exhibit 1-C the payroll for January 15, 1943? A. Yes.

Q. How many men does that show?

A. Nineteen men.

Q. And was your volume way up January 15, 1943, over what it had been January 15, 1942?

A. Yes, shows an increase from 1871 tons to 3283 tons.

Q. What do you attribute that last increase in 1943 to? A. Well, increase in sales.

Q. Was the season earlier in 1943?

A. Yes, the season was earlier and a greater demand.

Mr. Smith: I will offer in evidence Exhibits 1-A, 1-B and 1-C.

Trial Examiner Mouritsen: Any objection to the offer?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Q. (By Mr. Smith): Mr. Willard, have you marked on the originals of 1-A, 1-B and 1-C—January 15, 1941, on Exhibit 1-A, showing the pay-

(Testimony of F. A. Willard.)

roll period of January 15, 1941, the men [82] with which you started up operations of the plant the previous fall?      A. Yes, sir.

Q. And how have you indicated which men did start with you when you started up?

A. Each one of the men that is starred in this list.

Q. Will you call those off as it is marked on the original?

A. M. K. Stout, G. Harlan, S. Hogue, L. Gettle, R. H. Ireland, W. T. Morgan, G. P. Drinkard.

Mr. Smith: I notice, Mr. Examiner, the carbon copies were marked but the paper had evidently slipped and the correct marks on the copies aren't accurate.

Trial Examiner Mouritsen: I see. In any event, Mr. Willard has indicated the ones by name that were starred.

Mr. Smith: Yes, that is right.

Trial Examiner Mouritsen: Let me ask you, Mr. Willard, with reference to the time period upon which you base the various figures of the ice delivered, the total amount of ice delivered, what is the starting point in each instance?

The Witness: Well, that is ice sold to that date, January 15th.

Trial Examiner Mouritsen: All right. What is the beginning of that period?

Q. (By Mr. Smith): From when did you start counting, he means. [83]

A. From the first ton of ice that was sold.

(Testimony of F. A. Willard.)

Q. (By Mr. Smith): That would be in December?

A. We might start selling ice the latter part of December. We keep a record that comes to date for the season, start over at the end of the season.

Trial Examiner Mouritsen: My question is: Is the starting period the same in each season? If you use a longer period for one than you do for another, naturally, you wouldn't have the same basis.

The Witness: The season determines itself, that is when they start selling vegetables.

Mr. Smith: I think I can explain, Mr. Examiner. They start shipping lettuce all the way from the middle to the latter part of December here. That ice is used in the packing of vegetables, lettuce chiefly, from the beginning of the shipping season in December until January 15th of each year. Mr. Willard has indicated the number of tons of ice delivered to show the volume of ice in 1942 was about 700 tons more than it was in 1941, and a far greater increase in 1943, and yet they operated the plant with less men in both '42 and '43 than they did in '41, when they had the Diesel engines.

Trial Examiner Mouritsen: I understand that was your point.

Mr. Petersen: I want a question. What happens to the amount of ice used from January 15th to the close of the [84] shipping season? All they are telling us, even with Mr. Smith testifying, is the

(Testimony of F. A. Willard.)

amount of ice sold from the beginning of the shipping season to January 15th and then from January 15th to June. We would like to see what the total volume of ice is up to the end of the season.

Mr. Whitelaw: Take things in bites, you can't get a whole mouthful.

Trial Examiner Mouritsen: These figures, in each case, shows the amount of ice delivered is the amount of ice delivered from the beginning of the shipping season.

The Witness: Yes.

Trial Examiner Mouritsen: Which might be different in each season.

The Witness: Yes.

Trial Examiner Mouritsen: I think you stated that the period or the season in 1943, did or did not start earlier than usual?

The Witness: '43 started a little earlier.

Trial Examiner Mouritsen: How about '42, do you recall?

The Witness: Well, '42, I would say, was about a normal season, started the last of December.

Q. (By Mr. Smith): Does it vary more than a week one way or the other?      A. No.

Q. (By Trial Examiner Mouritsen): In any event, do I under- [85] stand your testimony to date to be that you start putting ice up around the first of October in each year?

A. First of November.

Q. First of November in each year?

A. Yes.



(Testimony of F. A. Willard.)

Q. For a while that goes into storage, until the demand takes care of it?

A. Yes. See, this was a large year and a large number of employees, that is due to the increase of ice and the large turn-over.

Q. That pertains to Respondent Ice Company's Exhibit 1-C?           A. Yes.

Trial Examiner Mouritsen: Very well. I will receive them in evidence as Respondent Ice Company's Exhibits 1-A, 1-B and 1-C.

(Thereupon the documents referred to, heretofore marked for identification as Respondent Ice Company's Exhibits Nos. 1-A, 1-B and 1-C, were received in evidence.)

RESPONDENT ICE COMPANY'S  
EXHIBIT No. 1-A

Holtville Ice & Cold Storage Co. January 25, 1943.

Payroll For Period Ending Jan. 15, 1941

Engine Room:

M. K. Stout #

H. G. Miller

E. S. Jones

H. T. Pool

Engine Maintenance

M. Wooldridge

L. C. Hart

Can Pullers:

G. Harlan #

S. Hogue #

(Testimony of F. A. Willard.)

H. Fruhn

A. Standifer

P. Blandenship

Storeroom:

L. Gettle #

R. H. Ireland #

W. T. Morgan #

S. H. Harlan

B. Pool

R. S. Hefner

Platform & Delivery:

(Tons of ice delivered  
up to Jan. 15, 1941: 1151.4)

E. Broderick

T. Herring

G. P. Drinkard #

H. C. Fredinburg

Garage Mechanic:

N. Ballard

[Pencil Note]: 22 men

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RESPONDENT ICE COMPANY'S  
EXHIBIT No. 1-B

Holtville Ice & Cold Storage Co. January 25, 1943  
Payroll For Period Ending Jan. 15, 1942

Tank Room:

M. K. Stout

G. Harlan

(Testimony of F. A. Willard.)

S. Hogue

L. Gettle

Storeroom:

R. H. Ireland

W. T. Morgan

A. ONeal

Oran Stephens

Dorman Stewart

Platform & Delivery:

(Tons ice delivered up  
to Jan. 15, 1942: 1871.1)

S. Harlan

G. P. Drinkard

W. Faulkner

Chas. Hefner

Garage Mechanic:

N. Ballard

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RESPONDENT ICE COMPANY'S  
EXHIBIT No. 1-C

Holtville Ice & Cold Storage Co. January 25, 1943  
Payroll For Period Ending Jan. 15, 1943.

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

R. H. Ireland

(Testimony of F. A. Willard.)

Storeroom:

W. T. Morgan

Dan ONeal

Earl Cook

E. Rathert

C. Veale, Jr.

Ray Brixey

Platform & Delivery:

(Tons ice delivered up  
to Jan. 15, 1943: 3283)

Ed Mauldin

G. P. Drinkard

Chas. Hefner

W. C. Hefner

Oran Stephens

J. Minyard

C. Sudduth

V. Veale

Garage Mechanic:

N. Ballard

[Pencil Note]: 19 Men—big labor turnover

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Q. (By Mr. Smith): Now, I will request—  
Trial Examiner Mouritsen: Pardon me just a  
minute.

Q. (By Trial Examiner Mouritsen): Let me  
ask you, Mr. Willard, do these pay rolls represent  
the high point in number of employees in each of  
these seasons?



(Testimony of F. A. Willard.)

A. No, I meant to point that out to you. We arbitrarily selected January 15th, first, because that is a pay roll [86] period and it is when we are doing a little more than normal business, but it doesn't cover February the 1st or February the 15th, which would show a big increase over that.

Q. I see.

Mr. Ryan: Big increase in the number of employees?

The Witness: Yes, that would be on the other side, whereas on this one we will put on more employees.

Q. (By Mr. Smith): Did you understand Mr. Ryan? He said those later dates show a bigger increase in the number of employees. You said, "Yes."

A. On the bigger increase, it will show a bigger increase on delivery.

Q. It will show a big increase on the amount of ice being delivered? A. Yes.

Mr. Smith: I will ask the reporter to mark this paper as Exhibit 2, for identification.

(The document referred to was marked as Respondent Ice Company's Exhibit No. 2, for identification.)

Q. (By Mr. Smith): Now, Mr. Willard, showing you a sheet of paper which is written at the top "Men used to start Plant after its being changed to an Electric Drive for 1941-42 Manufacturing Season on October 29, 1941." I will ask

(Testimony of F. A. Willard.)

you if that list of names shows the men that you used to start the plant with after you had installed the electric machinery? [87]      A. Yes, sir.

Q. That shows how many employees?

A. Seven.

Q. Had you been operating with Diesel machinery how many additional would you have had there?

A. At least seven more.

Mr. Smith: I will offer that sheet of paper as Respondent Ice Company's Exhibit 2.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Ryan: No objection.

Mr. Petersen: No objection.

Q. (By Trial Examiner Mouritsen): I assume, Mr. Willard, that both the information contained in Respondent Ice Company's Exhibits 2 and 1-A, 1-B and 1-C were taken from company records?

A. Yes.

Q. At your instructions?      A. Yes.

Q. You are satisfied as to their correctness?

A. Yes.

Trial Examiner Mouritsen: I will receive in evidence Respondent Ice Company's Exhibit 2.

(Thereupon the document referred to, heretofore marked for identification as Respondent Ice Company's Exhibit No. 2, was received in evidence.) [88]

(Testimony of F. A. Willard.)

RESPONDENT ICE COMPANY'S  
EXHIBIT No. 2

January 25, 1943    Holtville Ice & Cold Storage Co.  
Holtville Ice and Cold Stg. Co.  
Holtville, California

Men Used to Start Plant After Its Being Changed  
to an Electric Drive for 1941-42 Manufacturing  
Season on Oct. 29, 1941.

Tank Room:

M. K. Stout

G. Harlan

S. Hogue

L. Gettle

Storeroom:

R. H. Ireland

W. T. Morgan

G. P. Drinkard

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Q. ———for the past five years, would you say  
your slack period has commenced——

A. From the middle or the latter part of June,  
and run through the first of November.

Q. All right. What has been your custom each  
year, for the past five years, in regard to laying  
men off when your slack period started?

A. Well, we had to shut the plant down soon  
after the vegetable shipments started, and we al-  
ways, wherever possible, reserved any maintenance

(Testimony of F. A. Willard.)

or repair work for that period, and in doing that, so far as possible, we would use our own employees to do it.

Q. Then was there a period after they finished doing repair and maintenance work that the big majority of them were laid [90] off until you started up machinery in October or November?

A. Yes, we would have to finish up our maintenance and repair work. If that was done before it was time to start the plant, they were laid off.

Q. As a rule, when did they finish this maintenance and repair work when you closed down in the latter part of June?

A. Nearly always we could run a repair crew right through the summer until we were ready to start up.

Q. Did you, however, lay some men off every summer?

A. Yes, we couldn't always hold all of them on all summer, but some of them we did.

Q. Mr. Willard, what has been the custom about putting those men back to work? Did you go and tell the men when you wanted them to come back or did you send word to them, or did they come to you or just how was that handled?

A. Well, most always they knew in advance when we were going to start up, and if the boys were laid off they dropped around from day to day to find out when we were going to start up. And we could always tell within a week or two weeks of when we were going to start, and tell them.



(Testimony of F. A. Willard.)

Q. Individual men, then, would come and re-apply to be put back, is that it?

A. I wouldn't say re-apply, they would come and find out when we were going to start. They would just ask somebody when they were going—

[91]

Q. There was no date set for starting up when they were laid off then?      A. No.

Q. It was never a custom of sending for the men when you wanted them back?

A. Well, in some instances the superintendent might send word to certain boys to be around at a certain time, if he hadn't already seen them. There was no set practice of doing that.

Q. Isn't it a fact up until the last year or so, there has always been a waiting list of men that wanted to work there?      A. Yes.

Mr. Petersen: May I ask a question? You say a waiting list of men that wanted to work there. Are you talking about old employees or fellows just out prospecting for a job?

Q. (By Mr. Smith): Maybe you can answer Mr. Petersen's question.

A. Well, the old boys, of course, wouldn't be around waiting for a job, they knew whether we were going to have it or not. There was always a crew around there every day looking for work.

Mr. Petersen: Employees who had worked for you before?

The Witness: Yes. [92]

Q. (By Mr. Smith): Can you state, without

(Testimony of F. A. Willard.)

going into numbers, Mr. Willard, whether you laid off as many men at the close of the season in 1941 as you normally had, except those that had been running the Diesel machinery, and maintenance?

A. Well, there was no change in the practice, the men that had been running the engines still stayed on and did maintenance work all through that summer.

Q. What work did you have those enginemen and maintenance men do while you were changing the plant from Diesel work to the electric power?

[93]

Mr. Smith: I would like to look at my notes just a second.

I don't believe I will put on my case in chief at this time. I am just covering a few things covered by Mr. Ryan. I believe that is all of the cross examination I will indulge in at this time. I will put Mr. Willard on the defense in chief and go over everything.

Trial Examiner Mouritsen: Anything further of this witness?

Mr. Peterson: I have some questions.

Mr. Ryan: I want to ask him a few questions.

Mr. Peterson: You can have yours first. [94]

#### Redirect Examination

Q. (By Mr. Ryan): Mr. Willard, looking at these pay rolls, which are in evidence as Company's Exhibits 1-A, B and C, there are employees on there, are there not, at least there are in Company's Exhibits 1-B and 1-C, that had never worked for

(Testimony of F. A. Willard.)

the company prior to those seasons covered by the pay roll? Starting with the first *on*, Company's Exhibit 1-A. Are there any employees who had never worked for the company before the 1941 season on there?      A. January 15, '41?

Q. Yes.

A. Well, I couldn't say about that. That is when the company was operating at normal operation.

Q. Well, going over then to Company's Exhibit 1-B. Are there any employees on there who had not worked for the company in previous seasons?

A. There are two men, Stephens and Stewart. I don't recall them, they might be new men.

Q. Are there any others on that?

A. No, sir.

Q. Had Faulkner worked for the company previously, do you know, Mr. Willard, W. Faulkner?

A. Faulkner. He might be a new man, I don't recall him. [95]

#### Recross Examination

Q. I thought that was entirely different. Now, you stated that the electrical operation is self-sustaining, that the electrical motors run by themselves. Who oils the electrical motors, or don't they need oiling?

A. They are oiled about once a year.

Q. Once a year?      A. Yes.

Q. Do you ever have any running repairs on the electric motors whatsoever?      A. Yes, we do.

(Testimony of F. A. Willard.)

Q. Who does those?

A. Mr. Bush in El Centro.

Q. You have that done now by a private contractor?

A. Any work he would do would have to be done by private contract.

Q. You are doing it by private contract instead of the Diesel engines you were doing the maintenance work with your crew in the plant? [100]

A. No, that isn't right. The maintenance you would have to electric motors has to be done by an expert, which we don't have, never had. About all that can happen to a Diesel motor is the bearing to burn out.

Q. Did your maintenance men, while you were overhauling the Diesel engines, put in any new bearings? A. Oh, yes.

Q. You had men that could put in bearings before? A. Yes, on Diesel.

Q. Is there any difference in the bearing on a Diesel engine and the bearing on a motor?

A. Yes.

Q. What is the principal difference?

A. Diesel engine bearing comes prepared, a Diesel engine is made purposely for the easily replacing of the bearing. At that time we rebored them, rebored the sites, and put them in. The electrical motor, we don't have the bearing and we are not prepared to do it.

Q. Can you buy a bearing for replacement, do you know?



(Testimony of F. A. Willard.)

A. Yes; you might not be able to now.

Q. You were operating your generating equipment, which is also a motor? A dynamo is a motor?

A. Its ability is about the same.

Q. You had bearings on the dynamos, didn't you? A. Yes. [101]

Q. Your maintenance crew replaced those bearings on the dynamos?

A. I don't recall we ever had any repairs to do on them.

Q. The bearings and everything stood up as far as the dynamos were concerned?

A. There was one engine we replaced a bearing on, that is the only one I can recall in the whole operation.

Q. Did you ever have any other repair work that you had to do on dynamos? Not on the Diesel motors but the dynamos?

A. Yes, we recently had a motor burn out a bearing and it was replaced by Bush.

Q. That is a motor?

A. I mean on dynamos.

Q. When you had dynamos generating your electricity, did you ever have any repair work?

A. No.

Q. When was the change-over entirely made between Diesel and electricity for power?

A. Well, that was a gradual operation. It started at the time we shut down the plant and it wasn't completed until, I think, soon after November, that fall.

(Testimony of F. A. Willard.)

Q. Did the boys who were working for you as engineers all hire as engineers when they were first hired by your company? A. No.

Q. They worked in other jobs around the plant?

A. Yes. [102]

Q. When these boys were laid off, did you offer them a chance to work at any other position?

A. No.

Q. At the plant? A. No.

Q. There was nothing said about their coming back, going back to any other kind of work whatever, that they had previously performed?

A. No, there was not, we selected the crew we wanted to start the plant up on, and those were the only ones that were notified.

Q. Did some of the boys in the engine room have seniority over other employees down there as far as length of time they had worked for your company?

Mr. Smith: I want to object to that question at this time. I purposely avoided to name those laid off. I intended to go into every one of them individually in my defense. It will save going over this thing twice.

Trial Examiner Mouritsen: I notice Mr. Ryan didn't go into that, perhaps he had some object in his presentation. Let's wait until it is opened up.

Q. (By Mr. Petersen): You stated that your company owns these sheds and you deliver the ice to the various packing sheds. Do you have any

(Testimony of F. A. Willard.)

mechanical equipment in those sheds for the handling of ice?      A. Some of them, yes.

Q. Does your company keep up that mechanical equipment or [103] does the packing company?

A. The packing house is supposed to keep it up, it is in the contract to keep it up. We do some work on it, very little.

Q. You do some work in keeping that up?

A. Yes.

Q. Who used to do that work in the past, we will say, previous to October, 1941?

A. Well, once in a while Lester Hart or Marion Wooldridge would do some work in one of the sheds.

Q. Who does that work now?

A. The packing house and sometimes Pete Pool goes down and does a little work in the shed.

Q. You mean Mr. Pool?      A. Yes.

Q. You just stated that at the commencement of the season in November, 1941, you already had your crew picked out you were going to work for that packing season, that is, the key crew, is that right?      A. Yes, sir.

Q. Was that your general practice of picking out the crew ahead of time?

A. Well, we never had occasion to do it before.

Q. What do you mean by that?

A. Well, just what I said. We never had that kind of an [104] occasion to arise.

Q. In other words, you never had to decide who you were going to lay off or who you weren't going to lay off, is that it?

(Testimony of F. A. Willard.)

A. That is right, yes, sir.

Q. Now, these employees you had decided you were going to keep after November, 1941, and work there, did you notify those employees they were to come back to work?

A. The ones we were going to start the plant with?

Q. Yes.           A. Yes.

Q. You notified each one of them individually?

A. Yes.

Q. You didn't notify any of the employees that you laid off concerning the possibility of their being on in any way, shape or form?

A. No, we didn't. [105]

Q. (By Mr. Petersen): Did Mr. Osborne call you when you came back from the east?

A. No, sir.

Q. Did you call Mr. Osborne?           A. Yes, sir.

Q. What did you say to Mr. Osborne?

A. I told Mr. Osborne there was some union activities around the plant, and asked him if he knew anything about it.

Q. What did he say? [106]

A. He said, yes, he knew all about it and he would be over and see me in a few days.

Q. Did he come over to see you in a few days?

A. Yes.

Q. What did he say then about the union activity he knew all about?           A. That is already——

Trial Examiner Mouritsen: Tell us again, Mr. Willard.



(Testimony of F. A. Willard.)

The Witness: He said there was union activities in the Valley, all over the Valley, and that the A. F. of L. was apparently trying to unionize the ice industry in the Valley. I asked him what I should do about any situation. He said I shouldn't do anything.

Q. (By Mr. Petersen): How long was Mr. Osborne there at that meeting?

A. Well, I couldn't say.

Q. Approximately? A. Maybe an hour.

Q. Is that all you and Mr. Osborne said, the few statements you just put in the record?

A. That would cover the whole of it, yes.

Q. Did Mr. Osborne go into any details concerning his knowledge of the organizational campaign?

A. I don't believe I understand the question.

Q. Did Mr. Osborne give you any idea of his source of [107] information concerning the organizing of the Teamsters?

A. The organizing of what?

Q. The ice plants.

A. No, I don't think he did. I do recall he told me that the—some baking company here in town had some difficulties, and the employees had organized their own union; I recall he told me that.

Q. Did Mr. Osborne tell you about contacting any of the other ice companies in the Valley here?

A. No, I don't recall that he did.

Q. Did Mr. Osborne go into the subject of independent unions with you?

(Testimony of F. A. Willard.)

A. Well, if he did I don't recall it. I know he told me about this bakery company, employees forming a union there. Now, I believe I am wrong on that. I believe it was this wholesale grocery company he told me about, employees formed their own union. [108]

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H. T. OSBORNE,

called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name.

A. H. T. Osborne.

Q. Where do you live?

A. Four miles south of El Centro.

Q. What is your occupation?

A. Farmer, member of the Board of Supervisors, and Secretary-Manager of the Associated Farmers of Imperial County.

Q. You operate a farm in the vicinity of El Centro?

A. Yes, sir.

Q. Engaged in—you raise what on this farm?

A. Alfalfa and some livestock.

Q. Did you say you were secretary-manager of the Associated Farmers of Imperial Valley?

A. Yes.

Q. Imperial County. Will you give us a description of the Associated Farmers of Imperial

(Testimony of H. T. Osborne.)

County as to when it was organized, by whom and for what purpose?

Mr. Whitelaw: Just a minute. Object to by whom it was organized as being wholly immaterial. [115]

A. Organized by a group of farmers.

Trial Examiner Mouritsen: I will permit him to answer. Tell us, generally.

I don't see any point in going through the specific names unless you desire to.

The Witness: A group of farmers in Imperial County, for the purpose of combating subversive and radical activities.

Q. (By Mr. Ryan): In Imperial County?

A. In Imperial County primarily. The Associated Farmers of California is similar in organization to the American Legion; Federation of Counties organized as this one here.

Q. The Associated Farmers of California is a statewide organization, is it not? A. Yes.

Q. What connection with that organization does the Associated Farmers of Imperial County have?

A. A unit.

Q. A unit of the state organization?

A. Yes.

Q. Which one was organized first, if you know?

A. Associated Farmers of California.

Q. How many units are there, other than the Associated Farmers of Imperial County? [116]

A. Approximately forty-two.

(Testimony of H. T. Osborne.)

Q. Are they all county units located in California? A. Yes.

Q. Associated Farmers of Imperial County is an incorporated organization? A. Yes.

Q. When was it incorporated?

A. I think—about in 1936.

Q. Where was it incorporated in the State of California? A. El Centro.

Q. A California corporation? A. Yes.

[117]

Mr. Ryan: Who are the officers of the Associated Farmers of Imperial County? [118]

Mr. Whitelaw: At the present time?

Q. (By Mr. Ryan): The present time.

A. Mr. G. G. Bennett is the president.

Q. How long has he been president?

A. Since 1938.

Q. Who are the other officers?

A. The vice-president is Mr. Harvey Hastings of Brawley. The treasurer is Mr. C. H. H. Small. And I am the secretary-manager.

Q. Is there a Board of Directors?

A. A Board of Directors.

Q. Who are the members of the Board of Directors?

A. I couldn't give you the accurate list, I can give it to you later on. I can't give it to you now.

Q. Will you get it? A. Yes, I will.

Q. How long have you been secretary-manager of the Associated Farmers?

A. Since July, 1937. [119]



(Testimony of H. T. Osborne.)

Q. I am interested in obtaining from you, Mr. Osborne, a general overall picture of just what you have to do, what you have been doing as secretary-manager of the Associated Farmers of Imperial County, to carry out your duties?

Mr. Whitelaw: I object to the question on the grounds that the answer sought is a compound and involved one. It has nothing to do at all with the subject matter of the examination, it is entirely too remote.

Trial Examiner Mouritsen: I will overrule the objection. I think the witness can tell us generally what he has done and his duties, give us a general idea at least.

The Witness: Generally speaking, it is a protection of the agricultural industry of this county.

Q. (By Mr. Ryan): Protection of what sort, Mr. Osborne?

A. Agricultural industry of this county.

Q. What sort of protection?

A. Protection against radical activities and subversive activities.

Q. And from your experience, what does the Associated Farmers interpret as being radical and subversive activities?

A. Taking subversive activities, it might be explained in this way: In 1929 the Communist Party came into the [123] Valley, established headquarters and proceeded, through their group, and their activities, to disturb the economic set-up in this county.

(Testimony of H. T. Osborne.)

Q. Did that group come in as a labor organization or as a political party at that time, Mr. Osborne?

A. First it was the promotion of the Communist theory of government, and subsequently it became a labor set-up.

Trial Examiner Mouritsen: Mr. Osborne, weren't those people taken care of by the duly constituted authorities of the Valley? Weren't they imprisoned? As I recall they were.

The Witness: The first group were, they were tried in 1929 and a number of them sent to the penitentiary under the Criminal Syndicalism Act.

Q. Under what group in the Valley did this group work, as it were, this subversive group? Was there any particular group in the Valley they sought to work among?

A. Separate groups. The largest group were field workers.

Q. Field workers in the vegetable raising business here?

A. That was the largest group, they did not confine their attentions entirely to that group, they worked on other groups.

Q. What were some of the other groups?

A. Men who worked in the sheds, white help.

Q. In 1929 the Associated Farmers had not yet been formed? [124]

A. No, it had not.

Q. And so after those early subversive elements, as you have referred to them, were prosecuted, as

(Testimony of H. T. Osborne.)

I understand, was there a subsequent recurrence of that?      A. Yes.

Q. Or at least what you interpreted to be a recurrence?      A. Yes.

Q. Did the Associated Farmers become interested then?

A. We did not exist at that particular time?

Q. Did you later?      A. Later, yes.

Q. When the Associated Farmers of Imperial County were formed, what acts did the Associated Farmers take to intervene with that situation which you considered to be a recurrence of subversive activities?

A. A campaign of education to inform our people of the program, as we learned it and understood it.

Q. When you refer to "our people", just what particular groups do you have reference to?

A. The public of Imperial County.

Q. That would include both employers and employees?      A. Yes, sir.

Q. And citizens?      A. Yes. [125]

Q. Does this document represent any enunciation of any certain principles of the Associated Farmers?      A. In a general way, yes. [128]

Q. (By Mr. Ryan): The Associated Farmers, however, did keep that bulletin in their booth as an exhibit during the Fair and give it out to anyone who would be interested?

A. That is my understanding. [129]

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Mr. Osborne, looking at Board's 6-B, can you tell us what it is?

A. That is——

Mr. Whitelaw: It speaks for itself.

Trial Examiner Mouritsen: I will let him answer it.

A. Declaration of Principles.

Q. (By Mr. Ryan): Of the Associated Farmers?  
A. Yes, of Imperial County.

Q. Do you know by whom that was prepared?

A. Yes.

Q. By whom? [130]

A. By Mr. Bennett and myself.

Q. And what was done with that document after it was prepared?

A. It was attached to a bulletin and sent to the membership.

Q. Of the Associated Farmers?

A. Yes, and it has been distributed.

Q. To the Associated Farmers?

A. To those, to other people as well.

Q. How was the distribution made to other people?  
A. Personal application mainly.

Q. Who paid for the printing up of that document and the distribution?

A. Done in my office.

Q. Was there any expense in connection with the preparation or circulation?

A. No, not outside of postage.

Q. Do you have authority in your possession to do such things on behalf of the Associated Farmers?



(Testimony of H. T. Osborne.)

A. I do.

Q. Does Mr. Bennett also? A. Yes, sir.

Q. (By Trial Examiner Mouritsen): I take it this is a document that was put out by the Imperial County branch of the Associated Farmers?

A. Yes, indeed. [131]

Q. (By Mr. Ryan): Mr. Osborne, was this document ever posted generally throughout the packing sheds throughout this Valley?

A. Yes.

Q. When was that done?

A. It has been done several times, but the first, I think, was in 1938. I am not sure of that, but approximately that time.

Q. It has been done from time to time since then? A. That is right.

Q. And by whom was the posting done?

A. By myself and Mr. Bennett.

Q. Did you have the sanction of the Associated Farmers in doing that? A. We did.

Mr. Ryan: I offer Board's Exhibit 6-B in evidence.

Mr. Whitelaw: No objection to that one.

Trial Examiner Mouritsen: Any objection, Mr. Smith?

Mr. Smith: The only objection I have is that there is no showing it was ever called to the Holtville's attention or it ever came within their knowledge. I don't believe they would be bound by what is contained in it.

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Was it ever posted in the plant of the Holtville Ice and Cold Storage, do you know?

A. I don't know, I don't think so. [132]

Trial Examiner Mouritsen: I will overrule the objection and receive it as Board's Exhibit 6-B.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 6-B, was received in evidence.

### BOARD'S EXHIBIT No. 6-A

**Farmers! Laborers! Businessmen!**

We Associated Farmers Believe in Liberty, Personal Individual Human Liberty.

We Believe in All Possible Social Gains, and in the Steady Elimination of Economic Maladjustments. But We Want These Things Without the Sacrifice of Liberty.

We Don't Believe Any Real or Fancied Economic Advantage, or the Promise of Such Is Any Justification for the Destruction of Human Liberty.

We Will Subscribe to Any Plan for the Improvement of the Economic or Social Status of Any Group, as Long as It Doesn't Entail the Destruction of Anyone's Personal Liberty.

We Believe in Liberty as a Principle of Government. Therefore, It Concerns Us Just as Much to Preserve the Liberty of Others as to Preserve Our Own. We Realize That When a Principle of Government Is Broken Down for One It Is Broken Down for All.

(Testimony of H. T. Osborne.)

We Associated Farmers Are Pledged to Accept Nothing Less for Ourselves and Those About Us Than the Exercise of Our Full Legal and Constitutional Rights of Personal Liberty.

We Will Fight Any Group, Any Place, Any Time That Tries to Destroy the Personal Liberty of Anybody.

We Never Fight Progress. We Only Fight the Reactionary Philosophy of Slavery That Is Too Often Coupled With Schemes for Economic Improvement.

If You Also Believe in Liberty as a Principle, as an Ideal and as a Workable Philosophy, Then You Belong With Us.

Join Now.

G. G. BENNETT

G. G. Bennett, President

Associated Farmers of  
Imperial County

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## BOARD'S EXHIBIT No. 6-B

### "Associated Farmers"

#### Declaration of Law and Order

Declaration of the Principles and Objectives of the Associated Farmers of Imperial County in Regard to Any and All Labor Disturbances.

This organization will use all of its power and influence for the protection:

First, of the lawful rights of every man to join

(Testimony of H. T. Osborne.)

and be active in any labor organization he chooses.

Second, the right of every man to choose his own representative for collective bargaining.

Third, the right of every man to collective bargaining.

Fourth, the right of every man to join in a strike for the betterment of his wages and working condition.

Fifth, the right of every man to bargain for himself for the sale of his own labor.

Sixth, the right of every man to refuse to join a union, if he so chooses.

Seventh, the right of every man to use the highways for any lawful purpose, including his right to the peaceful and unmolested use of the highways in going to and coming from his work, even though his route passes through a picket line.

Eighth, the right of every man to demand the protection of the law and law enforcement officers in the exercise of these rights.

Therefore the Associated Farmers of Imperial County demand of the law enforcement officers and officials, both city and county, that they become exceedingly diligent in the protection of these legal and constitutional rights of all the people. In the event of strikes or labor controversies of any kind every man will be protected fully in all his legal rights. Any issue arising between an employer and his employee must be settled on economic grounds alone and the weapons of fear and intimidation will not be tolerated.



(Testimony of H. T. Osborne.)

Lawlessness and mob violence are things for the past in this county.

The man power of the Associated Farmers of Imperial County will work in cooperation with and under the direction of the law enforcing officers of this county for the enforcement of this program.

This resolution was passed by unanimous vote of the Directors of the Associated Farmers of Imperial County, January 23, 1939.

G. G. BENNETT

G. G. Bennett, President

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Q. (By Mr. Ryan): Mr. Osborne, as secretary-manager of the Associated Farmers of Imperial County, can you tell us whether or not that organization is autonomous or whether it is subject to certain rulings and restrictions of the State organization? A. It is practically autonomous.

Q. And what is there that would keep it from being completely autonomous? You use the word "practically", so [133] I assume there is something—

A. Yes. Some policy regarding some particular activity might be defined by the State organization and be of no particular concern of ours, but we would adhere to it.

Q. Can you give us an example of one of those that has occurred in the past?

A. Yes. The State organization—stated here

(Testimony of H. T. Osborne.)

last summer at the hearing—was not in favor of local associations.

Q. Local employees' associations?

A. That is right. We are.

Q. Was there ever any discussion between the local Associated Farmers of Imperial County and the State on that?      A. There has been.

Q. There has been?      A. Yes.

Q. As I understand it, your organization took the position it was in favor of them and the state was not. What was said in that connection, do you know, by the Associated Farmers organization?

Trial Examiner Mouritsen: Which one?

Mr. Ryan: The Associated Farmers of Imperial County.

Mr. Whitelaw: I think what was said——

Mr. Smith: Object to it as being hearsay so far as the respondent ice company is concerned, we weren't present. [134]

Trial Examiner Mouritsen: Wouldn't you be primarily interested in what the local organization decided to do?

Mr. Ryan: Well, that is what I am getting at. Maybe it isn't clear.

Q. (By Mr. Ryan): I want you to state the position that the Associated Farmers of Imperial County took on that matter and what expression of that position was made by any representative of the Associated Farmers.

A. I can answer it, Mr. Ryan, if you would ask

(Testimony of H. T. Osborne.)

what the attitude of the State organization was, and I could explain ours then.

Trial Examiner Mouritsen: Can't you explain yours without explaining that of the State?

The Witness: The State objected to local associations being formed. Their reason was that these local associations would be taken over by one of the major unions.

Q. (By Mr. Ryan): Referring either to the A. F. of L. or the C. I. O., or both?

A. That is right.

Q. What was the position of the Associated Farmers of Imperial County, if you know, on that?

A. Our position was that we would organize them and if the labor organizations could sell their merchandise to these new associations, O. K.

Q. In other words, the Associated Farmers of Imperial County, [135] were willing to take that chance, is that right? A. Exactly so.

Trial Examiner Mouritsen: What was the date of this meeting, this last one? Did I miss that or is it pretty clear? When did that occur?

Q. (By Mr. Ryan): When did this difference of opinion regarding the Association matter take place, when did that come in?

A. I can't recall.

Q. Can you give us an estimate?

A. Not very close.

Q. Was it 1938 or '39, or what year was it?

A. I couldn't tell you exactly.

Q. (By Trial Examiner Mouritsen): Let me

(Testimony of H. T. Osborne.)

ask you, Mr. Osborne, what was the final outcome, did you decide to go along with the State association or did you decide to maintain your viewpoint?

A. The evidence is that we maintained our viewpoint.

Q. In other words, you continued to operate in that fashion, although the State organization did not favor it, is that correct?

A. That is correct.

Q. Would you say that that has been the policy then of the local association, meaning the Associated Farmers of Imperial County, for the last two years or three years, at [136] the least?

A. Yes, sir.

Q. Let's see, we started out on this association example wherein you were not practically autonomous, that would be an indication to me that you would be pretty autonomous where you operate contrary to the rules established by the States association. Isn't that correct?

A. Yes.

Q. I am interested in establishing the approximate time when that position was taken by the Associated Farmers and proceeded to carry out their position, even though the State association didn't agree with you. Didn't you fix that for the past three years which covers everything in this period, as I see it?

Q. (By Mr. Ryan): Mr. Osborne, as secretary-manager of the Associated Farmers, do you have occasion to contact members from time to time?

A. I do.



(Testimony of H. T. Osborne.)

Trial Examiner Mouritsen: We will take a short recess.

(A short recess was taken.)

Trial Examiner Mouritsen: The hearing will come to order. The hearing will be in session.

Q. (By Mr. Ryan): What is the general nature of the reasons for which you would contact members of the Associated Farmers? [137]

A. Matters of legislation, discussion of policy, and general information about what is going on.

Q. In what connection.

A. Subversive activities or radical activities.

Q. Is it your job to keep the members advised on those matters? A. To a large extent.

Q. Is it your job also to keep them advised on matters pertaining to their employees, such as organizations efforts occurring among employees?

Mr. Smith: Object to that as leading and suggestive.

Trial Examiner Mouritsen: I will overrule the objection.

A. To a certain extent.

Q. (By Mr. Ryan): Regarding the Holtville Ice and Cold Storage Company, do you know anything about the circumstances leading up to that company's becoming a member of the Associated Farmers? A. Yes.

Q. Did you personally have any contact with the company in that regard?

A. With Mr. Willard.

(Testimony of H. T. Osborne.)

Q. When did that contact first occur?

A. 1936; 1936, I believe.

Q. What was the purpose of the contact at that time? [138]

A. To explain our organization, its motives and activities.

Q. To Mr. Willard? A. Yes.

Q. Was anyone present, Mr. Osborne, during that discussion? A. I am not sure.

Q. Where did the meeting take place?

A. In his office.

Q. What part of the year, 1936, was it?

A. Shortly after we were organized, I can't remember the exact time.

Trial Examiner Mouritsen: Board's Exhibit 4 shows a contribution was made in November, 1936, by the respondent ice company. At the time you first saw him, did he make a contribution?

The Witness: I think he mailed that in, I am not certain. Some of those were mailed in.

Trial Examiner Mouritsen: Did he send it in shortly after you first talked with him? I am merely attempting to establish the time.

The Witness: I was not the secretary-manager at that time, I don't recall, it was a long time ago. That was the idea, to talk to him about the——

Q. (By Mr. Ryan): Can you give us the general substance of your conversation with Mr. Willard at that time? A. Yes. [139]

Q. Will you do that, Mr. Osborne?

(Testimony of H. T. Osborne.)

A. I explained to Mr. Willard why we were organized. He was very well informed on events that took place in this Valley.

Q. What particular events?

A. Along subversive lines and radical lines, and I explained to him the set-up so far as the State of California was concerned; the Associated Farmers of California, I should say. [140]

Q. (By Mr. Ryan): Give us your best recollection of what you said.

A. We reviewed what had taken place in the past. We reviewed the situation in the 1935 Legislature with reference to the Criminal Syndicalism Act and the opposition by radical and subversive groups to our program to sustain the act and keep it on the statute books.

Q. The Syndicalism Act?

A. That is right.

Q. And what explanation, if any, did you give him as to the purpose of the Associated Farmers of Imperial County at that time?

A. That we were going to be vigilant and watch for any recurrence of what had taken place in previous years, and we were going to try to protect the right of, not only the employer, but the employee, of any radical move on the part of anybody.

Q. And what was the standard by which you judged the matter of radicalism? What did you base that judgment on?

A. On what happened at different times to our people.

(Testimony of H. T. Osborne.)

Q. Who has been guilty of radicalism? Who has been [141] chiefly guilty of radicalism, if you know?

A. Various union leaders, not only here, but in other parts of the State.

Q. Those labor unions affiliated with any particular labor organization? A. Yes.

Q. Which ones in particular?

A. Two major organizations, the C. I. O. and the A. F. of L.

Q. And what had they been doing that you judged to be radical, that you are basing your judgment of radicalism on?

A. Principally what happened around the northern part of the State, San Francisco and some of the northern agricultural counties.

Q. You mean strikes and things like that?

A. Yes, and threats.

Mr. Smith: I think the word "strikes", interposed by Mr. Ryan, is leading and suggestive.

Trial Examiner Mouritsen: I will overrule the objection. Mr. Osborne is an intelligent witness, he made the designation he thought necessary to that particular question. If he disagrees with Mr. Ryan I am sure he will state it.

Q. (By Mr. Ryan): Are there any other reasons that you based your judgment of radicalism on in regard to those two organizations?

A. Principally that, we had no trouble here outside of [142] Communistic differences at that time.



(Testimony of H. T. Osborne.)

Q. Then thereafter, did you have occasion to meet with Mr. Willard from time to time, or not?

A. Yes.

Q. About how often on a yearly basis?

A. Why, I met him—I have known Mr. Willard, been friendly with him for a good many years, met him at the Golf Club and other places, on the street, public meetings.

Q. Did he ever have occasion to contact you?

A. Not to any extent. He would come to my office, friendly call.

Q. There for any business purposes?

A. Not particularly, no.

Q. In the fall of 1941, did you have any contact with Mr. Willard at any time? A. I did.

Q. When did you have such a contact?

A. It was the latter part of September, or the first of October, somewhere along in there.

Q. Can you explain the nature of that contact, how it came about?

A. Yes. Mr. Willard called me on the phone, told me that he had had some trouble, and I contacted him.

Q. Where were you at the time you were called?

A. In my office at the court house. [143]

Q. That is the Associated Farmers' office?

A. That is right.

Q. Go ahead. What was said?

A. I talked to Mr. Willard, spent some little time with him. I hadn't seen him since he had been on his vacation.

(Testimony of H. T. Osborne.)

Q. Are you still referring to a telephone conversation?  
A. No.

Q. Did he indicate to you when he called you on the telephone, what that trouble was?

A. Yes, he did.

Q. What did he say in that regard?

A. I don't recall just what he said.

Q. Did he tell you what kind of trouble it was?

A. Yes.

Q. What did he say about it?

A. I don't recall just what he said. He told me of his trouble there, the labor situation. I told him I would see him.

Q. Did you thereafter go and see Mr. Willard?

A. I did.

Q. About how much later?

A. I think the next day.

Q. Where did you meet him?

A. I met him in his office.

Q. Was anyone else present at that time? [144]

A. No.

Q. Tell us what the conversation was about on that occasion, what you said and what he said.

A. The conversation was about his situation there. We also talked about his vacation trip.

Trial Examiner Mouritsen: Mr. Osborne, the conversation was about the situation there, that means——

The Witness: About his labor situation.

Trial Examiner Mouritsen: Tell us, in general, what he said.

(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Give us the substance of what you said and what he said about the labor situation.

A. He told me that there had been a disturbance in his working force, and I told him that I knew a great deal about it.

Q. What did you know about it?

A. I have had some contacts locally and in Holtville and knew what was going on.

Q. What was going on?

A. Unionization of the ice industry.

Q. By what organization?

A. By—principally under the direction of the Teamsters Union.

Q. Affiliated with the American Federation of Labor?      A. That is right. [145]

Q. What contacts did you have, Mr. Osborne, that gave you that information?

A. Boys that worked in the ice plants.

Q. Was that the disturbance that Mr. Willard was talking to you about, the organization by the Teamsters in the plants?      A. That is right.

Q. What did he say to you?

A. Well, Mr. Willard did not know just what his position was, what he could do about it. I told him there was nothing he could do about it without violating the Act.

Q. Did he say anything else to you?

A. No, he was somewhat perturbed. I don't recall just what he said but I advised him to keep hands off.

(Testimony of H. T. Osborne.)

Q. Do you remember anything else?

A. No, I don't.

Q. You testified in the hearing which was held last fall in this hotel by the Labor Board, did you not, in which you were answering a subpoena duces tecum in this matter, in this same case?

A. Yes. [146]

Q. (By Mr. Ryan): Mr. Osborne, I show the transcript of the hearing in the matter of Holtville Ice and Cold Storage Company, et al, and Chauffeurs, Teamsters and Helpers, Local 898, A. F. of L. The hearing occurred on September 29, 1942, and I direct your attention to page 75 thereof, which recites——

Mr. Whitelaw: What page? [147]

Mr. Ryan: Page 75.

Q. (By Mr. Ryan): It purports to recite some of your testimony. I direct your attention to what purports to be your answer, line 8, page 75, and ask you to read that.

(Witness complies.)

Q. Is that correct?

A. As I said in my next sentence there, it is about the gist of it.

Q. I quote from the record: "Mr. Willard said, 'Your are fairly well versed in Labor Relations, you know the situation here in the Valley, you know something about my own situation. I would like you to interest yourself in this situation.'"

A. The next sentence——

Q. "That was about the gist of it. I did so."



(Testimony of H. T. Osborne.)

Q. (By Trial Examiner Mouritsen): Does that refer, Mr. Osborne, to this same conversation you are now giving us?

A. I take it that is what it was.

Q. Does that refresh your recollection as to what was said on that occasion, in more detail, as to what Mr. Willard said?

A. Mr. Willard was looking for some advice, and I told him——

Mr. Smith (Interrupting): I object to that as a conclusion and opinion of the witness.

Trial Examiner Mouritsen: I will overrule the objection. [148] Answer the question.

The Witness: I told him that he could not interfere in any way in this matter, and I told him I would make an investigation of the situation, and did so.

Q. (By Mr. Ryan): Did you also tell him what you would do after you had made an investigation?

A. No, sir.

Q. But you did say, in substance, and effect, what is set forth here in the record that Mr. Willard said, "You are fairly well versed in Labor Relations, you know the situation here in the Valley, you know something about my own situation. I would like you to interest yourself in the situation." He did say that to you?

A. Well, approximately that, I couldn't repeat his exact words at this time.

Mr. Whitelaw: I think the Examiner should

(Testimony of H. T. Osborne.)

explain to the witness he has a right to answer "Yes" or "No", and then explain his answer if he wants to; all witnesses should be instructed that way. This is the kind of a question, it is a very delicate question here and I think Mr. Osborne should be given that advantage instead of saying "Yes" or "No" to Mr. Ryan's question.

Trial Examiner Mouritsen: I will so advise him. Mr. Osborne, you are directed to answer the questions as simply and directly as you can. If you feel an explanation [149] is necessary in order that it be fully understood, you may make it.

Q. (By Mr. Ryan): Mr. Osborne, after this conversation you have just testified about in Mr. Willard's office, did you proceed to make an investigation? A. I did.

Q. Of the labor situation among the employees of the Holtville Ice and Cold Storage Company?

A. I did.

Q. How soon after this meeting in the office did you proceed with such investigation?

A. I think a day or maybe two days, I think it was the next day.

Q. What did you do in conducting this investigation? How did you go about it?

A. I contacted several of the boys who worked in the—had been working in the plant; I guess they were still working at that time.

Q. Can you name them?

A. That is where I picked up my information.

Q. Can you name them?

(Testimony of H. T. Osborne.)

A. Tom Herring, George Harlan.

Q. Where did you contact Tom Herring?

A. I can't recall, I believe it was in the drug-store.

Q. In Holtville? [150]

A. In Holtville, it might have been at his home.

Q. Do you recall what the general substance of your meeting with him was? A. Yes.

Q. What was said?

A. Mr. Herring had told me that—gave me what information he had.

Q. What was that information?

A. The information was that—about the plant, what had taken place down there.

Q. What had taken place, did he say?

A. He told me the situation as far as the York installation was concerned, and the trouble that came from that.

Mr. Petersen: Mr. Examiner, may we ask that the witness not indulge in generalities. He says like this: I discussed the situation, the trouble that came from that, those are all generalities.

Trial Examiner Mouritsen: All right. If you can, Mr. Osborne, give us what was said. In other words, you describe a situation and trouble. The thing is, we want to know as nearly as you can just what Herring said.

The Witness: All right.

Trial Examiner Mouritsen: You don't have to give him the exact words, we don't expect that.

The Witness: Herring said that some of the

(Testimony of H. T. Osborne.)

local boys [151] that worked about the plant at various jobs, and some were detailed to assist the welders in putting in the large tank, and that there had been trouble. I don't recall that he stated who caused it, but there was trouble emanating from some source which I don't recall at the present moment. They wouldn't allow these local boys who were non-union to work with the boys who are union, that had caused considerable trouble and the union had tried to persuade them to join the union. I think it was this local. And that they had had several conferences with them.

Q. With the union? A. With the union.

Q. Whom had the union tried to persuade to join the union?

A. The employees of the Holtville Ice and Cold Storage Company who were helping the welders. In fact,—it developed that all of them had been interviewed by the union.

Q. All of the employees, you mean?

A. That is right.

Q. Of the Holtville Ice and Cold Storage Company? A. That is right.

Q. What else was said, if anything?

A. They were not very much interested in it.

Q. Is that what he said?

A. Yes, they were interested in the set-up that some organization in El Centro had, particularly the Kramer [152] Baking Company.

Q. Is that what he told you? A. Yes.

Q. What did you say to him on that?



(Testimony of H. T. Osborne.)

A. I said that I would tell him about the set-up, advise with him.

Q. What set-up?

A. Let him do whatever he wished to do or any of them, as far as that is concerned. Local association, local employees.

Q. And did you meet any other employees of the company then?      A. Yes.

Q. What other ones?

A. I met Mr. Harlan at that time.

Q. Where did you meet him?

A. At his home.

Q. Did you go out to his home to see him?

A. Yes.

Q. Who was present while you were at his home?

A. Mrs. Harlan.

Q. What was said by Mr. Harlan and by yourself on that occasion?

A. Mr. Harlan was not in sympathy with the movement to join the union, and he wanted to know—he said that they had had some discussion about a local association, and [153] wanted to know about it. I explained it to him, told him what they could do.

Q. What did you tell them they could do?

A. They could join anything they chose to join.

Q. What else was said, if anything?

A. That he would take the matter under consideration.

Q. Was that all of that conversation, that you remember?      A. Practically all of it.

(Testimony of H. T. Osborne.)

Q. Did you go to see any other employees?

A. Yes. I can't remember their names, there was one man who handled the local trade, I can't remember his name, called at his home.

Q. Was he an employee of the company?

A. Yes. And while there several boys came over there, several of the other boys came over and entered in the discussion.

Q. Employees? A. That is right.

Q. When did that meeting take place?

A. I think the following day.

Q. You can't recall the employees' names?

A. I can't no.

Q. After you had talked to some of these employees, did you go back to Mr. Willard and tell him what you had found out? [154]

A. I didn't talk with Mr. Willard.

Q. What was the general result of your conversation, so far as inquiring into the trouble in the plant?

Mr. Whitelaw: Objected to, it has already been asked and answered.

Trial Examiner Mouritsen: Overrule the objection.

Q. (By Mr. Ryan): What did you find by your investigation?

A. I found there was some coercion on the part of the union with these boys. And I found out also that these men that I talked to were very loyal to Mr. Willard.

(Testimony of H. T. Osborne.)

Q. What do you mean by that, loyal to Mr. Willard?

A. They had worked for him a good many years and they also liked him.

Q. Mr. Osborne, I again show you the transcript of the hearing in this matter which was held in this hotel on September 29, 1942, and direct your attention to page 75, which purports—

Trial Examiner Mouritsen: Is this on the basis of refreshing the witness' recollection?

Mr. Ryan: Yes.

Trial Examiner Mouritsen: Why don't you—

Mr. Ryan (Interrupting): It is on the basis of his statement that he did not report back to Mr. Willard after his investigation.

Trial Examiner Mouritsen: I see. [155]

Q. (By Mr. Ryan): I show you page 75 of the transcript, and direct your attention to the question on line 22, and to your answer following that.

Does that refresh your recollection now that you did report back to Mr. Willard?

A. I met Mr. Willard somewhere, and that is about the extent of it. I talked casually with him; I didn't seek him out.

Trial Examiner Mouritsen: Wait a minute, now. Do you make some differentiation between reporting to him and telling him what you found out in your investigation?

The Witness: Oh, yes. I had no business talking to Mr. Willard. I would involve him and myself, too, if I made it a point to go down and make

(Testimony of H. T. Osborne.)

him a full report. I simply told him his men were loyal to him, that was all, there was no particular discussion about this.

Q. (By Mr. Ryan): Beginning with line 22, on page 75, I put the question to you, "When did you report—then did you report back to Mr. Willard the result of your contacts with employees in the matter"? Your answer: "just in a brief way, yes."

Mr. Whitelaw: We submit that is the same answer he has given now.

Q. (By Mr. Ryan): My question: "What report did you make back to Mr. Willard"? Your answer: "That the men [156] were still loyal to him and wanted to work for him."

Mr. Whitelaw: That is what he says now. What difference is there?

Q. (By Mr. Ryan): Now, did you have occasion to meet with any of the employees, Mr. Osborne, of the Holtville Ice and Cold Storage Company during this time, when you were making this investigation, any group together? A. Yes.

Q. Where was that meeting?

A. At—it was either Mr. Tom Herring's or Mr. Harlan's home.

Q. Who was present at that meeting?

A. There were several of the men.

Q. Employees? A. Of the employees.

Q. What took place at that time?

Mr. Whitelaw: Just a minute. We object, there is no time placed. Was this prior to Mr. Willard



(Testimony of H. T. Osborne.)

coming back from his vacation or after he came back?

Trial Examiner Mouritsen: Try to fix the time, Mr. Ryan.

Q. (By Mr. Ryan): When did this meeting occur, the last one?

A. Well, it was some time in October, I can't remember the exact time. [157]

Q. Would it be in the early part or the latter part?

A. I rather imagine it might have been around the 8th or 10th, I can't recall the exact time.

Q. Over how long a period had you been contacting these employees after your talk with Mr. Willard at his office, when he called you there?

A. I imagine a couple of weeks.

Q. And toward the latter part of that time you met with his man Harlan and some other employees at his home, or the home of Tom Herring?

A. That is right, I can't remember.

Q. What took place at this meeting?

A. They had gone into this matter of a local association, and decided that is what they wanted to do. They wanted my advice.

Q. What did you advise them?

A. That they should do whatever they wanted to. If they wanted to organize, they could.

Q. Did you do anything to assist them in getting information on how to organize?

A. They asked for that. And I explained the procedure.

(Testimony of H. T. Osborne.)

Q. Who asked for it?

A. I can't recall which one.

Q. What did you do to assist them?

A. I explained the procedure. [158]

Q. What did you say in that regard?

A. That they should have a temporary chairman and a temporary secretary, and start from there; keep minutes.

Q. Did you tell them about by-laws and constitution?

A. Yes, they had those. They had studied those.

Q. Where did they obtain them?

A. I had shown them a copy of the form used by several organizations here, and originally drafted by Mr. Whitelaw.

Q. The attorney in this case?

A. Yes, and they had been in Mr. Whitelaw's office and had adapted them to their needs apparently.

Q. Where had you gotten the copies that had been drafted by Mr. Whitelaw?

A. You mean the originals?

Q. Yes.

A. Well, I had gotten them from him.

Q. And you turned them over to them for their use, is that right?

A. I let them look at it, I didn't let them have it, they got their copies from Mr. Whitelaw.

Q. Who told them they might get their copies from Mr. Whitelaw?

(Testimony of H. T. Osborne.)

A. I told them any legal advice they wanted, if they were interested, to go to Mr. Whitelaw, the man that drafted these; they apparently did, they so informed me. [159]

Q. Mr. Whitelaw, was he at that time connected with the Associated Farmers?

A. Yes, he was at the time.

Q. Did you give them any advice on how to proceed to elect officers? A. I did.

Q. What did you advise them in that regard?

A. I advised them to—as I said before—start with a temporary chairman, temporary secretary, and then proceed to elect a permanent chairman and permanent secretary, and follow the by-laws in detail, which they did. They elected their officers in that way.

Q. Did you give them any advice on the preparation in the keeping of minutes of the meetings?

A. I did.

Q. How did you explain that to them?

A. That it was necessary, if they had meetings, to have minutes of those meetings, keep them in their own way.

Q. How many meetings did you attend? You have already told us about this one. A. One.

Q. The Association then did come into existence about that time?

A. They formed, according to the by-laws, a bargaining committee, I think there were three.

[160]

Q. Three members?

(Testimony of H. T. Osborne.)

A. Three members. And they presented their proposition to Mr. Willard as to hours, wages and working conditions. And they presented them to him in writing, and he returned his answer to them. And then they called me to visit Mr. Willard.

Q. Who called you?

A. The Association. I think Mr. Harlan. Would I go into a conference with Mr. Willard on this matter of wages and hours and working conditions.

Q. Did you? A. I did.

Q. When you met with Mr. Willard, was the committee for the Association there also?

A. They were.

Q. When did that meeting occur, approximately?

A. Oh, some days after they were organized.

Q. Well, was that in the month of October also?

A. I don't recall, it was some time later, might have been, might have been the early part of November.

Q. It is indicated that the contract became effective November 1, 1941. Would it have been around that time? A. Around that time.

Q. Did you take part in the negotiations while you were present that day? [161] A. Yes.

Q. With respect to wages and hours?

A. Yes.

Trial Examiner Mouritsen: Who were you representing there, Mr. Osborne, the Association?

The Witness: The Association. [162]



(Testimony of H. T. Osborne.)

Q. (By Mr. Ryan): Mr. Osborne, did you advise these employees that they might go to Mr. Whitelaw for advice regarding the setting up of an association of employees?

A. Why, I think it was the second trip I made over there.

Q. That was when you began your investigation, after you had talked to Mr.—— A. Yes.

Q. ——Willard in his office?

A. That is right.

Q. It would have been within a few days after that? A. That is right.

Q. Did you have occasion to contact Mr. Whitelaw during that time then to advise him they might contact him?

A. I don't think so, I don't recall. [166]

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### HERMAN T. POOL

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please, Mr. Pool? A. Herman T. Pool.

Q. What is your address?

A. Route 3, Holtville.

Q. Were you ever employed, Mr. Pool, by Holtville Ice and Cold Storage Company?

A. Yes, sir.

(Testimony of Herman T. Pool.)

Q. When were you first employed by that company?      A. I worked a while in '29.

Q. 1929?      A. Yes, sir.

Q. How long did you work on that occasion?

A. Possibly six weeks. [171]

Q. In what capacity?

A. In the cold storage.

Q. And did you work for the company at any other time?      A. Yes, again in '31 or '32.

Q. And how long did you work for the company at that time?      A. Possibly a month.

Q. Did you work for them any other time?

A. No,—I started again in December of '35.

Q. How long did you continue in the employ of the company at that time?

A. Until the 1st of October in 1941.

Q. When you began in 1935 to work for the company, what was your job?

A. I was relief storeroom man and ice puller.

Q. How long did you continue on that particular job as relief storeroom man and ice puller?

A. Possibly a year.

Q. What was your salary when you began on that job, or your wage?

A. Sixty cents per hour.

Q. Did it continue at that rate while you remained on that job?      A. Yes, sir.

Q. Did you say you stayed on that job about one year?      A. Yes. [172]

Q. What did you do after that?

A. I went on as a regular ice puller.

(Testimony of Herman T. Pool.)

Q. How long did you continue as a regular ice puller?

A. In July of '38 or '39, I don't recall which.

Q. What wage did you receive when you began as a regular ice puller, if you remember?

A. At the time I started I think it was sixty cents per hour.

Q. Did you continue on that wage during your——

A. It later changed to \$117 per month.

Q. While you were still an ice puller?

A. Yes.

Q. What were you receiving at the end of your term as a regular ice puller?

A. The same wage, \$117 per month.

Q. After that what did you do?

A. I was made relief operator, in the engine room.

Q. And how long did you continue as a relief operator in the engine room?

A. Possibly 18 months.

Q. Was that what you were doing when you left the employ of the company?

A. No, I was running regular shift.

Q. What do you mean by that?

A. One of the operators had quit and that throwed me on [173] one of the regular shifts.

Q. You were a regular operator, you mean?

A. Yes, that throwed me to work at nights.

Q. When did you begin on that job as a full-fledged operator?

(Testimony of Herman T. Pool.)

A. It was in the fall of '40 or spring of '41, I don't remember which.

Q. First of all, what wage did you receive as an operator?      A. \$125 per month.

Q. What were your duties as an operator?

A. I had to take readings, make the log sheet out, keep the Diesel engines oiled, see they had plenty of water, oil the icing machines, keep the temperature of the tanks down.

Q. Had you had any previous experience as an engineer, or knowledge of engineering?

A. Not until I went into the plant, no.

Q. Had you ever taken any courses in engineering in school?      A. No, sir.

Q. During your period of employment, from December, 1935, when you say you began on this last period of employment, with the company, until your employment terminated in the fall of 1941, will you tell us whether or not there were periods in any of those years when you were laid off for slack of business or for any reason?

A. Yes; the first couple of years I was laid off for slack [174] business during the summer.

Q. During the summer months?      A. Yes.

Q. For how long, approximately?

A. I think one was six weeks and the other about thirty days.

Q. On the occasion of your lay-off then, how did you get back to work after the lay-off, would you be notified, or how would you get back to work?



(Testimony of Herman T. Pool.)

A. When we were laid off the superintendent usually told us about when they figured on starting again. Maybe we would drop back by the plant in a few days before that date and see, or maybe we would strike him up in town and he would notify us.

Q. Now, after the first two years when you say these lay-offs occurred in the summer, did you work straight through after that, or just how did you do it?

A. Well, as I recollect we worked straight through and had a two weeks' vacation each summer.

Q. That began about what year?

A. I usually had mine the first of October.

Q. When did you begin working straight through and having a vacation for a couple of weeks, what year did that begin?      A. That was '38.

Q. And in the year of 1941, how did you work that year? [175] Did you work the entire year up to the time you were laid off, or just how did you do that?

A. Yes, sir; I worked the entire time.

Q. And when did you say you were laid off, your employment was terminated I mean?

A. I went on my vacation the 1st of October in '41, and I never did get to go back to work.

Q. When you went on your vacation did you have a conversation with any representative of the company about going on your vacation?

A. The superintendent informed me that—a day

(Testimony of Herman T. Pool.)

or two before I would go on my vacation the 1st of October.

Q. Was there a set time to take vacations? I mean, was it for one week, two weeks or a month, or how long?

A. You mean how long we was to take?

Q. Yes. A. Two weeks.

Q. Now, Mr. Pool, did you ever have occasion to join a labor organization while you were employed by the Holtville Ice and Cold Storage Company?

A. Not up until '41, when I joined then.

Q. You did join then? A. Yes, sir.

Q. When in 1941 did you join the labor organization?

A. The last of September, around the 26th or 27th. [176]

Q. And what organization did you join on that occasion? A. The A. F. of L.

Q. What branch, what part of the A. F. of L.?

A. I was going as the operating engineer division.

Q. Pardon?

A. I was going in the operating engineers.

Q. Is that what you joined?

A. Yes, I joined—after I didn't go back to work I went ahead and paid off the money in the regular truck union.

Q. In the Teamsters Union? A. Yes, sir.

Q. Will you tell us the circumstances leading up to your joining the union the latter part of Septem-

(Testimony of Herman T. Pool.)

ber, 1941, how it came about you joined the union on that occasion?

A. Well, there was quite a bit of contract work going on at the plant, all receiving good wages.

Q. What do you mean by that, will you explain what you mean by contract work that was going on?

A. Well, the York Icing Machine people was putting in a new can tank in the plant and the contractor was putting in some new posts in the storeroom.

Q. Go ahead and explain it further.

A. Well, the man that was working on the tank, they refused to use any of the fellows around the plant that wasn't union, said they had to bring in their helpers from L. A., so a [177] bunch of the fellows got to talking if they would go union they would get on the work, get the good wages.

Q. This contract job, you mean?

A. Yes, sir.

Q. So what happened then?

A. Well, I knew some of the fellows that was working on the carpenter gang that I used to work with in the storeroom. One of them asked me how about them joining in the union.

Mr. Whitelaw: We object, it is purely hearsay.

Trial Examiner Mouritsen: All right. I think it isn't very material.

Mr. Whitelaw: I know, it is hearsay.

Mr. Petersen: Certainly not hearsay, Mr. Examiner. It is not hearsay if some of the fellows he knew told him something. He is testifying on direct

(Testimony of Herman T. Pool.)

testimony what somebody told him, that is not hearsay.

Mr. Smith: It would be hearsay as to——

Trial Examiner Mouritsen: Go ahead and answer the question.

A. As I say, some of the fellows I knew asked me how about joining in the union.

Mr. Smith: I couldn't understand what the witness said.

Trial Examiner Mouritsen: Read the answer.

(The answer was read.)

Mr. Whitelaw: I think that is hearsay. [178]

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Ryan): You may proceed and give us——

A. I told him I would think it over. So the next day he brought me over some applications to fill out if I wanted to come into the union.

Q. One of the union men on the contract job?

A. Yes, sir.

Q. What did you do?

A. Well, there was a bunch of the fellows got together during that lunch hour and was talking it over.

Q. A bunch of the fellows?

A. Fellows working in the plant.

Q. Employees of the company?

A. Yes, sir.

Q. Holtville Ice and Cold Storage Company?

A. Yes, sir.



(Testimony of Herman T. Pool.)

Q. Go ahead, and tell us what occurred.

A. That evening there was a union man by, organizer, invited us over to the hall that night.

Q. Over to the union hall?

A. Yes, sir, here at El Centro.

Q. And what did you do then?

A. Well, the majority of the fellows decided to come over.

Q. Did you come over to the union hall that night? [179]

A. Yes.

Q. Over here in El Centro?

A. Yes.

Q. The American Federation of Labor Union Hall, you mean?

A. Yes.

Q. Did anyone else come besides you?

A. Yes, sir.

Q. Who did come?

A. Henry Fredenburg was one, Lester Hart, Henry Miller, Tom Herring, Bailey Pool, Perry Blankenship and Pete Drinkard. I think that was all that come that night.

Q. When you got to the union hall was anyone else present at the union hall?

A. Of us fellows that worked at the plant?

Q. Yes.

A. No, sir, we all come over in cars, two cars.

Q. Did you all come together at the same time, I mean?

A. Yes, sir.

Q. When you arrived at the hall, what did you do?

A. Well, we went up into the hall and into the Labor Hall and took a seat.

(Testimony of Herman T. Pool.)

Q. What else did you do after you got up there?

A. Well, they discussed about going into the union.

Q. Was there any union officials present?

A. Yes, sir. [180]

Q. Who was present on behalf of the union?

A. Ken Lloyd.

Q. What branch of the A. F. of L. did he represent, do you know?

A. I couldn't state for certain what branch.

Q. Do you know whether he was a Teamster representative?

A. I suppose he was a Teamster.

Q. (By Trial Examiner Mouritsen): You don't know, is that right?

A. I don't know, for certain.

Q. (By Mr. Ryan): What did you do then there besides talk about the union, as I understood you to say you did?

A. Some of the fellows asked him if they went into the union what protection they could get, maybe the company officials of the Holtville Ice wouldn't go for it. They said we would just have to take a chance on getting that over.

Q. Did you proceed to join the union there?

A. Yes.

Mr. Smith: That is objected to as calling for the opinion and conclusion of the witness.

Trial Examiner Mouritsen: Yes. Tell us what you did.

(Testimony of Herman T. Pool.)

Q. (By Mr. Ryan): Tell us what you did in that regard, tell us what happened at the union hall. What did you do after you got up there? [181]

A. We took a vote among ourselves to see whether to join in that night or not. The majority agreed to join. We all signed in, made application to go into the union.

Q. Did you sign up something there at the union hall?

A. I made an application to become a member.

Q. Do you know whether the others did or not, who were present?

A. They all made applications, as far as I know.

Q. Did you see them make them out?

A. They was writing on them.

Q. Did you, thereafter, make any payment to the union?

A. Yes, sir.

Trial Examiner Mouritsen: What does that matter?

Mr. Ryan: It doesn't make any difference, just indicating he went on through with it.

Q. (By Mr. Ryan): Did you have any conversations thereafter, with your brother, Pete Pool, after that night at the union hall?

A. Yes, sir.

Q. When did you next have a conversation with him?

A. I couldn't be exact, but I think it was the next day.

Q. Who is Pete Pool?

A. He is my brother, superintendent of the Holtville Ice.

(Testimony of Herman T. Pool.)

Q. Where did you have a conversation with him?

A. At the plant. [182]

Q. And was anyone else present?

A. I don't think so.

Q. Where were you at the time you had this conversation with your brother?

A. In the engine room.

Q. Were you working at the time? Was that your working period?

A. No, I think I just dropped by the plant to clean up that day.

Q. Will you tell us what conversation there was, what you said and what your brother said?

Mr. Whitelaw: I think that is absolutely hearsay so far as the respondents Hugh T. Osborne and Associated Farmers are concerned, rankest, purest kind of hearsay.

Trial Examiner Mouritsen: As I understand the testimony of the witness the man, Pete Pool, is the superintendent out there.

Mr. Whitelaw: That is nothing to Associated Farmers.

Trial Examiner Mouritsen: There is some connection between Mr. Willard of the respondent Ice Company and Mr. Osborne of the Associated Farmers.

Mr. Whitelaw: Not a prima facie case established yet by any manner of means.

Trial Examiner Mouritsen: I will permit him to go forward. [183]



(Testimony of Herman T. Pool.)

Q. (By Mr. Ryan): You may answer the question.

A. Well, I don't recollect just exactly how the investigation started, but I informed him I had signed into the union the night before, so he told me he didn't think it was a very good idea, that Mr. Willard could get plenty of non-union men to operate his plant. I told him, well, we would just have to wait and see.

Q. Was anything further said on that occasion?

A. We probably had more conversation, but I don't recollect it. [184]

Q. Now, after this conversation that you have just testified about, that you had with your brother Pete Pool, did you have any conversation thereafter with your brother?      A. Yes, sir.

Q. When did you next have a conversation with him?

A. Well, I was on my vacation. He came out to my place, he had his horses out in my corral; he come out every day to feed them.

Q. At the time you made application to become a member of the union, were you on your vacation then, or when did your vacation begin?

A. Well, my vacation begin after I made application.

Q. At the time you had your first conversation with Pete Pool that you have just testified about, were you then on your vacation or was that afterward?

(Testimony of Herman T. Pool.)

A. No, I was still on the job. I hadn't been on my vacation.

Q. When did you go on your vacation, approximately? A. First of October.

Q. And how long were you on your vacation when you had this conversation with your brother, Pete Pool?

A. It was about the 8th or 9th of October.

Q. This occurred at your home, did it not?

A. Yes, sir. [185]

Q. Was anyone else present, other than you and Mr. Pete Pool?

A. Not in hearing distance, no.

Q. Tell us what conversation you had on that occasion. [186]

Q. (By Mr. Ryan): Will you tell us what Pete Pool said to you and what you said to him in this conversation that occurred at your house, that you started to tell us about?

A. Well, my brother informed me that Mr. Willard had informed him that there would be no relations working at the plant. He sort of laughed when he told me that. He said, "I guess you will be out hunting you another job." I told him, "Well, I was hunting one when I found that one."

Q. Did you have any more conversation with him on that occasion? A. No, I guess not.

Q. Thereafter did you have occasion to have conversation with your brother again?

A. Yes, I did.

Q. When was the next conversation?

(Testimony of Herman T. Pool.)

A. Well, it might have been two or three days or maybe longer.

Q. Where did that conversation take place?

A. Out at my place.

Q. Your brother was at your place again, was he?

A. Yes, sir. If I might explain why he was there so much, he kept his horses in my corral, that is the reason why he would be there.

Q. Who was present at that time when you had your conversa- [187] tion with your brother Pete Pool?      A. No one.

Q. What was said by Mr. Pete Pool and what was said by yourself?

Mr. Whitelaw: To which we object as being hearsay on behalf of the respondents Associated Farmers and Hugh T. Osborne.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Well, sort of laughed, he said, "Well, are you still with the union?" I told him, sure, I was going to ride it through. He said, "You are just riding a blank train."

Q. (By Mr. Ryan): Was there any further conversation than what you have already testified to? Was that all you said at that conversation?

A. As far as I remember, yes.

Q. Is that all your brother said?      A. Yes.

Mr. Whitelaw: I ask to have it stricken on the ground it is hearsay, and on the further ground it is incompetent, irrelevant and immaterial, and an expression of an individual, and not binding upon any of the parties in response to this action.

(Testimony of Herman T. Pool.)

Trial Examiner Mouritsen: I will deny the motion. [188]

Q. (By Mr. Ryan): Do you know Mr. Hugh T. Osborne? A. Well, yes and no.

Q. Have you ever met him? A. Once.

Q. When was that occasion that you met Mr. Osborne?

A. Well, he come to my home around the first week in October, '41.

Q. What time of day was it?

A. About dusk dark.

Q. About dark? A. Yes.

Q. Will you tell us just what occurred on that occasion? Did you have a conversation with him?

A. Yes, sir, I did.

Q. Was anyone present, Mr. Pool?

A. Yes, my wife was sitting on the front porch.

Q. Where did the conversation take place at your home? A. At the yard gate.

Q. Could you tell us what Mr. Osborne said to you on that occasion?

A. Yes. He was there when I drove in the driveway. I got out of the car, he shook hands with me, and introduced himself as Hugh T. Osborne. He said, "I guess you have heard of me, I was connected with the Associated Farmers." I told him I had heard of him. [189]

Q. What else was said?

A. The first thing he said after that was: "I am not going to let you bring the union into the Valley." I didn't exactly get what he was getting



(Testimony of Herman T. Pool.)

at when he first said it. So I told him that I wasn't bringing it in, it was already here.

Q. Was that the entire conversation?

A. No.

Q. Go ahead and tell us the entire conversation. What he said and what you said.

A. Well, he wanted to know what our differences was down there. I told him we would like to get a better wage. He asked me did I ask Mr. Willard for more money. I told him no, Mr. Willard hadn't been around much, I had no opportunity to ask him. He asked then why was we dissatisfied with our wages, and I explained to him about the fellows working on the contract jobs, drawing good money, making around \$250 a month, double our wages. He said, "Maybe the reason they got it, they only worked six months a year." I told him I would gladly work six months a year and take the other six months off, rather than work twelve for half that. He told about he and some other fellows going to a lettuce shed that was having some trouble run by a fellow named Godfrey. They made him line up some differences. I said, "Wasn't that like a union, going in a body?" He said, [190] "No, we went as American citizens." He went on to tell me about one fellow somewhere on the Coast who had asked to see the union books and they hit him over the head, and that was the last he ever wanted to see of them.

Q. Did he say anything else?

A. Yes, he told me, he said, "If you are not too

(Testimony of Herman T. Pool.)

far in, think it over and back out." I told him I would think about it.

Q. Did you hold any position with the union after you had applied for membership in it? Speaking now of the A. F. of L.

A. Hold any position with the union?

Q. Yes.

A. Well, I was elected shop steward by the fellows in the Holtville Ice.

Mr. Smith: Just a minute. I move that answer be stricken for the purpose of permitting an objection.

Trial Examiner Mouritsen: Why don't you move to strike it and then——

Mr. Smith: I move to strike the answer then for the purpose of making an objection. Move to strike the answer as a conclusion.

Trial Examiner Mouritsen: I will deny the motion. Although I would be interested in the time this occurred, Mr. Ryan. [191]

Q. (By Mr. Ryan): When were you selected as shop steward for the employees of the Holtville Ice and Cold Storage Company?

A. It was either the first or second meeting.

Q. Of what? A. At the union hall.

Q. And when you have reference to the meetings, when did the first meeting take place?

A. About the 26th or 27th of September, in '41.

Q. When did the second one take place?

A. About a week later.

(Testimony of Herman T. Pool.)

Trial Examiner Mouritsen: Was the second one after you started your vacation?

The Witness: Yes, sir.

Trial Examiner Mouritsen: Can you fix the time when you were elected with reference to the 1st of October, that is, when you started your vacation, was it before or after?

The Witness: That I do not know.

Q. At the time you were on your vacation, were you a shop steward for the union?

A. Yes, sir.

Mr. Smith: Mr. Examiner, I didn't make myself clear. As I understood the witness, he was elected to shop steward. There hasn't been any election testified to, no showing there was ever a majority of the employees attended any meeting [192] for the purpose of electing anyone to anything; it is a conclusion of the witness, electing him a shop steward.

Trial Examiner Mouritsen: As I understand it, he said the number of the men at the meeting of the 26th or 27th, he is not sure whether it was that meeting or the next one he was elected; it wouldn't be necessary for them to have a majority.

Mr. Smith: He has only testified to six or seven that ever even signed applications. There is no showing they ever became members.

Trial Examiner Mouritsen: He says they selected him as shop steward.

Mr. Whitelaw: Who selected him?

Mr. Yeager: Who selected him?

(Testimony of Herman T. Pool.)

Q. (By Mr. Ryan): Who selected you as shop steward, or elected you?

A. The fellows at the Holtville Ice and Cold Storage.

Q. Was it held at the Ice and Cold Storage plant, or where was it?

A. They took the vote at the union hall the night we was there. They wrote the names on papers and dropped them in a hat; no one seen who the other fellow was voting for.

Mr. Ryan: I have no further questions.

#### Cross Examination

Q. (By Mr. Smith): Mr. Pool, how many employees of the [193] Ice Company were present when they voted?

Mr. Petersen: Mr. Examiner, I request that Mr. Pool be given a list of the employees to see which ones were present, inasmuch as the other witnesses——

Trial Examiner Mouritsen: I will let him answer as far as he can from his unaided memory. If he wants any help or anyone wants to refresh his recollection from that, I will let them do it.

A. I think there was ten present.

Q. (By Mr. Smith): And can you tell who they were?

A. G. P. Drinkard, Lester Hart, H. G. Miller, Bailey Pool, Perry Blankenship, Tom Herring, Henry Fredenburg. Is M. K. Stout on the list?

Q. Stout? A. M. K. Stout, yes.

Q. I had not put him down before.



(Testimony of Herman T. Pool.)

A. And myself.

Q. That is nine. Who is Bailey Pool?

A. One of my brothers.

Q. Now, you say that was the second time you went to the union hall that took place?

A. No, sir, the first time.

Q. The first time. Was that the night that you signed an application card?

A. Yes, sir. [193-A]

Q. And did you see what G. P. Drinkard signed?

A. Well, they give him an application card, whether he signed it or not, I couldn't swear to that, no.

Q. Would that be true of all the rest of them, they gave them all cards but you couldn't swear whether they signed them or not?

A. No, there was two or three of them I seen sign them.

Q. So you are only positive of about two or three of them? A. Yes.

Q. Which two or three are you positive about?

A. I seen Lester Hart sign his and Perry Blankenship and Miller? [193-B]

Q. (By Mr. Smith): Were you notified by anyone you were accepted at that time?

Mr. Ryan: Object to that as immaterial.

Q. (By Mr. Smith): You were not, in fact, a member of any union at that time, were you, Mr. Pool?

(Testimony of Herman T. Pool.)

A. Not until I signed an application. I made application to become a member.

Q. What did you do with that application after you signed it?

A. I give it to the union man, Mr. Ken Lloyd.

Q. You are sure these other three men turned theirs in, also? A. Yes.

Q. You are not sure of the others?

A. They turned them in, yes, sir.

Q. All of them, or just the three you are sure of?

A. No, I am sure they all turned their applications in, whether they signed them or not.

Q. You didn't see whether they signed them or not? A. No.

Q. How many men voted when you say you were elected steward? A. They all voted.

Q. Were there nine ballots cast?

A. Yes, I suppose there was; they all voted.

[194]

Q. Was anybody else elected to anything else?

A. No, sir.

Q. That was the only office they filled, was it?

A. Yes, sir.

Q. And how many employees were there at the Holtville Ice Company at that time, do you know, approximately? A. About 14 or 15.

Q. And that 14 or 15 was just a skeleton crew that was kept on in summer, was it not?

A. I suppose it was, yes.

(Testimony of Herman T. Pool.)

Q. In other words, when you were in the height of the carrot season you probably had over 20 men?

A. Yes, sir.

Q. Is it not true each year as the carrot season was finished some men were laid off each summer?

A. Yes, the extra men that was put on during the winter was laid off in the summer.

Q. Well now, are you sure that you hadn't been laid off the summer before for a while?

A. I don't think I was, no.

Q. That would be the summer of 1940.

A. I don't think I had a layoff, I remember two weeks vacation.

Q. Are you sure about the year 1939?

A. No, I don't think I was laid off in '39. [195]

Q. How about your brother, Bailey Pool?

Mr. Petersen: To which we object on the ground it is hearsay and entirely irrelevant.

Trial Examiner Mouritsen: I will overrule the objection. I think your question could be a little more specific.

Q. (By Mr. Smith): Was your brother, Bailey Pool, an employee of the Holtville Ice Company at the time of the meeting up in the union hall?

A. No, he was off at the time.

Q. Well, how long had he been off then?

A. That I cannot recall.

Q. He is one of those that voted to make you the shop steward?

A. I don't know who voted for me.

Q. Do you know how many votes you received?

(Testimony of Herman T. Pool.)

A. Five or six, I don't recall exactly.

Q. Well now, when you started to take your vacation, Mr. Pool, were you not told that you would be laid off for a while? A. No, sir.

Q. Didn't they lay you off on October 1st, but paid you your wages until the middle of the month?

Mr. Petersen: To which we object. The witness has already testified he went on his vacation October 1st, and I don't like the line of questioning that he was laid off [196] on October 1st and they paid him his wages.

Trial Examiner Mouritsen: I will overrule the objection. The witness, I think, understands the question.

Q. (By Mr. Smith): Who did you have a conversation with——

Trial Examiner Mouritsen: Let him answer the first one.

Read the question.

(The question was read.)

The Witness: No, I received one week's wages from the first of October until the night of the 15th of October.

Q. (By Mr. Smith): Well, isn't it true that the ice company had only given one week's vacation on pay as a vacation, up until that time, as far as you know?

A. Yes, we have always had one week with pay and one week without pay.

Q. Well now, on October 1st, at the time you



(Testimony of Herman T. Pool.)

stopped working, did you have a conversation with Pete Pool or anyone connected with the plant, about taking your vacation?

A. Well, he informed me a day or two beforehand I was to start my vacation the first of October.

Q. Who informed you that?

A. Pete Pool, the superintendent.

Q. And did he say anything to you then that because of the change-over from Diesel to electric power that you might be laid off?

A. Not that I recall, no. [197]

Q. You know that the plant had changed its power during the summer, did you not?

A. Yes, sir.

Q. You assisted in the change-over from the Diesel engines to the electric, did you not?

A. Well, in a way, yes. I worked in the plant, taking out material.

Q. What kind of work had you been doing, Mr. Pool, from the time you stopped manufacturing vegetable ice in June, until October 1st?

A. What kind of work?

Q. Yes.

Trial Examiner Mouritsen: In the summer of 1941?

Mr. Smith: Yes, after the end of the carrot shipping season.

The Witness: I helped clean the cooling tower up, cleaned the wires up, used a cutting torch taking out water and oil lines, tearing out stuff that had to come out.

(Testimony of Herman T. Pool.)

Q. (By Mr. Smith): And did you finish whatever job you were on by about the time you started taking your vacation? A. No, I didn't.

Q. What work were you doing just prior to your vacation?

A. Helping overhaul an icing machine.

Q. Had that work not been completed by October 1st? A. It had not, no, sir. [198]

Q. Who was working on it besides you?

A. One York machinery man by the name of Harry Grumble and M. K. Stout.

Q. You say M. K. Stout is one of those that signed an application card and voted that night?

A. Yes, sir.

Q. He is still over there, isn't he?

A. Yes, sir.

Q. He was there before you were, wasn't he?

A. Yes, some time, I don't know just how long.

Q. Well, Mr. Pool, as I understand your work had been mostly completed with the engine room?

[199]

Q. (By Mr. Smith): For approximately two years prior to October 1941, had it not?

A. Yes, sir.

Q. That is, you were a Diesel engine operator?

A. Yes.

Q. Was it not common talk among you Diesel engine operators since the plant had changed over to electricity that probably some of you would be forced out?

Mr. Petersen: Object to that. Common talk

(Testimony of Herman T. Pool.)

among the operators would be purely and entirely hearsay.

Trial Examiner Mouritsen: Overrule the objection. Answer the question.

The Witness: Yes, there was talk there would be some men let out.

Q. (By Mr. Smith): In other words, you knew it wouldn't require Diesel engine operators when they had power?

Mr. Petersen: Same objection, Mr. Examiner, because he says he knew.

Mr. Ryan: I would like the question read.

(The question was read.)

Q. (By Mr. Smith): Would not require Diesel engine operators when they used the electric power?

A. Knew they were taking the Diesels out, we know there [200] wouldn't be any use for a Diesel operator when they didn't have any Diesels to operate.

Q. You never did have a conversation with Mr. Willard did you, Mr. Pool, about ceasing your employment, or coming back to work, or anything else?

A. No, sir, I did not.

Q. He never said anything to you and you never said anything to him? A. No.

Trial Examiner Mouritsen: A conversation with Mr. Willard?

Mr. Smith: Yes.

Q. (By Mr. Smith): The only one you ever

(Testimony of Herman T. Pool.)

talked with concerning your employment was your brother Pete?

A. He was superintendent, he was the man that hired us and fired us.

Q. Did Pete ever tell you on more than one occasion there was criticism that he was giving you, because you were his brother, more overtime work than he was some of the others and there was some kick about it?

A. He never told me anything like that at no time.

Q. He never did?           A. No.

Q. He did tell you once that Mr. Willard told him it was a company policy that a foreman or superintendent should not [201] employ a relative?

A. He told me that when I was on my vacation, the only time.

Q. The first time you had ever heard of that?

A. Yes.

Q. Had he, as a matter of fact, Mr. Pool, given you more overtime than he had the other operators?

A. Not that I know of, no.

Q. No one ever told you that he was accused of favoring you because you were his brother?

A. No, sir.

Mr. Smith: That is all.

Cross Examination [202]

Q. (By Mr. Yeager): Mr. Pool, at this conversation you had with Mr. Osborne you have related substantially everything [211] that was said by you



(Testimony of Herman T. Pool.)

and by Mr. Osborne at that conversation, have you, as well as you can remember it?

A. Yes, as well as I can remember it.

Q. Was there any conversation concerning employees union, or just what you have already testified?

A. No, he didn't offer no employees union.

Q. He didn't say anything about it?

A. No.

Mr. Yeager: That is all.

Q. (By Mr. Petersen): Now, you stated you had worked for a period of about four years continuous since 1935 at another job than in the engine room, is that substantially right?

A. Yes, I started in in cool storage and ice tank.

Q. When you were told that you were being laid off, were you asked whether you were willing to go back to the ice tank or the cold storage room?

A. No, sir, I was not asked.

Q. Did you have seniority over some of the employees?

Mr. Petersen: I will herewith hand the witness a copy of Respondent's 1-A for his benefit so he can——

Trial Examiner Mouritsen: Don't hand him a copy. Get the original.

Mr. Petersen: All right.

Q. (By Mr. Petersen): Now, of the men who were in the can department on Respondent's 1-A, had Mr. Harlan worked there [212] longer than you had at the plant, the last time you were there?

(Testimony of Herman T. Pool.)

A. No, sir.

Q. Had Mr. Hogue worked there longer than you had?      A. No, sir.

Q. Had Mr. Fruhn worked there longer than you had?      A. Yes, sir.

Q. Had Mr. Standifer worked there longer than you had?      A. No, sir.

Q. Had Mr. Blankenship worked there longer or as long as you had?

A. No, sir, he hadn't.

Q. Those are the men in the can pullers department. In the store room had Mr. Gettle worked there longer than you?      A. No.

Q. Had Mr. Ireland worked there as long or longer than you?      A. No, he hadn't.

Q. Had Mr. Morgan worked there as long or longer than you?      A. No, sir.

Q. Mr. Harlan?      A. No, sir.

Q. And Mr. B. Pool?      A. No, he hadn't.

Q. And Mr. Hefner? [213]      A. No, sir.

Q. You had worked in the can pulling and in the store room previous to becoming an engineer?

A. Yes, sir.

Q. Then this list of men who were put on in the can pulling and the store room departments, Mr. Fruhn was the only one that had any seniority in the plant over you?

A. Mr. Fruhn was not kept on, if I might state.

Q. He wasn't kept on, either?

A. No, sir.

(Testimony of Herman T. Pool.)

Q. He was the only one that had seniority over you?  
A. Yes, sir.

Mr. Smith: You didn't call the engine room.

Mr. Petersen: No, the engine room was being dispensed with, that is why I didn't go into that. It was just to show they could step down to a job just as well as being built up to the job.

May the witness have 1-B

Q. (By Mr. Petersen): Mr. Stout, you testified he worked there longer than you previously?

A. Yes, sir, he had.

Q. Did Mr. Harlan work there longer than you?

A. No, sir.

Q. Mr. Hogue? A. No, sir. [214]

Q. Or Mr. Gettle? A. No, sir.

Q. Or Mr. Ireland? A. No, sir.

Q. Mr. Morgan? A. No, sir.

Q. Mr. O'Neal?

A. I don't know whether O'Neal—there is a son and a father. The father had worked there at one time before I had.

Q. He was still working there in 1941 or '42.

A. No.

Q. Mr. Stephens?

A. I don't know the gentleman.

Q. Mr. Stewart? A. I don't know him.

Q. On the platform and delivery, Mr. S. Harlan?

A. I had been there longer than he had.

Q. Mr. Drinkard?

A. He had seniority over me.

(Testimony of Herman T. Pool.)

Q. He had seniority over you. Mr. Faulkner?

A. I had been there longer than he had.

Q. Mr. Hefner?

A. I had been there longer than he had.

Q. Then according to this list there were only two men on Respondent's Exhibit 1-B? [215]

Trial Examiner Mouritsen: You don't need to summarize, Mr. Petersen, we listened to what he said before.

Q. (By Mr. Petersen): Now, you have stated that your pay as a can puller or store room man, whichever it was, was \$117 a month, is that right?

A. The last part of the time I worked on the tank was \$117 per month or \$117.50, I don't recollect just which.

Q. How many hours did you work?

A. I worked 8 hours a day.

Q. How many days a week?

Trial Examiner Mouritsen: That is as a can puller?

Mr. Petersen: As a can puller and in the store room.

A. I worked six days a week part of the time and it was cut. I don't remember whether I was still on the tank or not when it was cut to five days per week.

Q. Were your wages kept the same when you were cut to five days as they were when you worked six days?

A. Yes, I guess they was kept the same.

Q. Kept the same. Now, you were asked a



(Testimony of Herman T. Pool.)

question about whether you saw Mr. Willard. To get back to the work, did you see Mr. Willard to get back to work this year after you were laid off by your brother, Pete Pool?      A. No, sir, I didn't.

Q. Did you on other years go to see Mr. Willard before you went back to work after you were laid off, if there was [216]a lay-off?      A. No, sir.

Q. Who did you see during those years to get back to work?

A. We always seen the superintendent.

Q. Did the superintendent generally notify you about the time they were ready to start?

A. Yes, sir.

Q. And did you then go down to the plant to see what was doing down there?

A. Yes, sir, sometimes we would go down, maybe a week early, something like that, drop around and see if they had changed their plans or anything, maybe start sooner or put it off longer.

Q. Has it been a general practice in the six years you worked continuously at the plant the last time that you knew when you were going back to work in the fall of the year?

A. You mean did we know for certain when we were going back?

Q. Yes.

A. Well, we always figured on going back, tell us maybe we would be off a month and come back at certain dates.

Q. Were you ever told in years prior to 1941 that you weren't coming back?      A. No, sir.

(Testimony of Herman T. Pool.)

Q. When these lay-off seasons started at the close of the—whatever it is—carrot season, when the carrot season [217] closed and the repairs were over, were you then told you could come back or you couldn't come back to work?

A. They would tell us we would come back when production started up again.

Q. Now, it has been brought out there was complaint concerning your brother favoring you on certain kinds of work down there. Did you stand a relief shift the same as the other 3 regular engineers down there?

A. Yes.

Q. Were you responsible for the operation during your shift?

A. Yes, sir.

Q. When was your brother hired by the Holtville Ice Company, your brother Pete Pool, approximately?

A. Approximately around 1930.

Q. Was your brother a superintendent when you started working for that company?

A. No, sir.

Q. When was your brother advanced to superintendent of the company?

A. Around '39, I am not for certain.

Q. After your brother told you your services were no longer needed there while you were on your vacation in October, did you ever discuss the matter with him of coming back to work for the company?

A. No, sir. [218]

Q. And he never asked you to come back?

A. No, sir.

(Testimony of Herman T. Pool.)

Q. Had he asked you on other years to come back?

A. Well, I don't know whether you would call it—come right out and asking pointblank, we figured on going back at the end of our vacation.

Q. Was your vacation one week with pay from the company and one week on your own time, as you have testified?      A. Yes, sir.

Q. And when you went on your vacation October 1st it was about—I believe you testified about October 8th that your brother told you that your services would no longer be needed, is that right?

A. About the 8th or 9th. [219]

Q. (By Mr. Smith): You never did ask for reinstatement at the Holtville Ice Company of any person, did you, Mr. Pool?      A. No, sir. [223]

Q. You didn't ask anybody to let you come back?      A. No, sir.

Q. (By Trial Examiner Mouritsen): I understand for about the last two years you were an engine operator, Diesel engine operator, is that correct?      A. Yes. [224]

Q. (By Mr. Petersen): Was your brother, Pete Pool, the superintendent over practically all the operations in the plant?

A. He had charge of the production end, the engine room, the can tanks and the store room.

Q. And did he also have charge of the repairs on the equipment that they had over in the sheds?

A. Yes, he would send men to the sheds to do it.

[225]

(Testimony of Herman T. Pool.)

Redirect Examination

Q. (By Mr. Ryan): Mr. Pool, when you made application for membership to the union, I believe you signed a document, you signed something?

A. I signed something.

Mr. Ryan: Miss Reporter, will you mark this or identification as Board's Exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 7, for identification.) [228]

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HENRY CLARK FREDENBURG

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): State your full name, please.

A. Henry Clark Fredenburg.

Q. Do you also go by Henry C. Fredenburg?

A. Yes.

Q. Or H. C. Fredenburg? A. Yes, sir.

Q. What is your address?

A. 565 Walnut Street, Holtville.

Q. Were you ever employed by the Holtville Ice and Cold Storage Company, Mr. Fredenburg?

A. Yes, sir.

Q. When were you first employed by that company? A. November 10, 1937.



(Testimony of Henry Clark Fredenburg.)

Q. How long did you continue in the employ of the company?      A. About October 23, 1941.

Q. 1941. And what was your position with the company when you began your employment?

A. I started out as a laborer. [240]

Q. What were you doing as a laborer?

A. First job, we tore down an ice place in Calexico.

Q. How long did you stay on that particular job as a laborer?

A. Well, it was right after the first of the year.

Q. Of what year?      A. 1938.

Q. And then what did you do?

A. I started—well, first I worked one day in the store room, and then I started driving a truck.

Q. And how long did you drive a truck?

A. Well, off and on until I was—until October of '41.

Q. You say off and on.

A. Well, in the winter time I hauled ice to the packing sheds and in the summertime I run a clear ice route in the country.

Q. That took up your entire time, running a truck, did it?

A. If we had any extra time, why, we would work the clear ice platform.

Q. What do you do on the platform?

A. Sell ice to customers.

Q. While you were employed by the Holtville Ice and Cold Storage Company, did you have oc-

(Testimony of Henry Clark Fredenburg.)

occasion to make application to become a member of any union or join any union?           A. I did.

Q. When did that occur? [241]

A. About September 26th, in 1941.

Q. What union did you join at that time?

A. A. F. of L. Teamsters.

Mr. Smith: I object to what union he joined as a conclusion and opinion of the witness; he made application.

Trial Examiner Mouritsen: I think that is some merit to that, Mr. Ryan. Let's find out what the circumstances were.

Q. (By Mr. Ryan): Did you make application?

A. Yes, sir.

Q. Where were you when you made your application?           A. Over at the Union Temple.

Q. Were you there alone?           A. No, sir.

Q. Who was with you?

A. Boys from the ice company.

Q. Other employees of the Holtville Ice Company?           A. Yes, sir.

Q. Who are they?

A. Well, there was M. K. Stout and Arthur Standifer and Herman T. Pool, Henry Miller, Lester Hart, Perry Blankenship, Bailey Pool, Tom Herring, Pete Drinkard, that is nine; that was all of us that was there, with myself, that night.

Q. Now, after this occasion when you were at the Union Hall, did you fill out any card that night?

[242]

A. At the Union Hall?

(Testimony of Henry Clark Fredenburg.)

Q. Yes.

A. Filled out an application blank.

Mr. Ryan: I have a blank card today in lieu of that card I submitted last night, which I don't think I will continue to present to the witnesses.

Trial Examiner Mouritsen: Have you compared this one you now have with the blank that is in evidence?

Mr. Ryan: Yes, it is the same thing.

Trial Examiner Mouritsen: Why don't you make the substitution? Is there any objection to that?

Mr. Smith: No, it is a good idea.

Mr. Whitelaw: The only objection we have is lack of foundation or identification by Pool as to the instrument which he actually signed. Of course, the evidence itself shows for that, I believe, so that it probably can be admitted for what it is worth. We appeal, Mr. Examiner, Mr. Pool absolutely failed to identify any instrument which he signed.

Trial Examiner Mouritsen: Well, I think, as he recalled, that was similar to the one he signed.

Mr. Whitelaw: Similar sheet of paper. He couldn't identify anything which was upon the paper itself upon my cross examination. I think he wholly failed to identify or lay the foundation for the introduction of the instrument. He never did say, "That is the instrument which I signed." [243] All he did say was, "Something like that."

Q. (By Mr. Ryan): Mr. Fredenburg, I show you what I have had marked as Board's Exhibit 7.

(Testimony of Henry Clark Fredenburg.)

for identification and which is in evidence as Board's Exhibit 7—

Mr. Whitelaw (Interrupting): Has it been admitted?

Trial Examiner Mouritsen: Yes.

Mr. Whitelaw: All right.

Q. (By Mr. Ryan): —and ask you to look at it and tell me whether or not you ever saw one before?

A. Yes, I signed one just like that.

Q. When did you sign one just like?

A. September 26th, 1941.

Mr. Whitelaw: Now, we wish to object if he signed one just like that, that that instrument is not the one which he signed and is not the best evidence at all. If he signed one it must be in the possession of the union, and it has not been disclosed why the original itself has not been introduced. In other words, as I understand the law, you can't introduce a secondary evidence until you prove the primary evidence is lost or destroyed.

Mr. Ryan: We have made a great search for the cards which were signed and have been unable to locate them. The union says they turned them over to an attorney and he says that he didn't have them, he doesn't remember they were ever turned over to him; some way in between they have been lost. [244]

Mr. Whitelaw: We feel until the record, under oath, is established you can't introduce secondary evidence of this type; we object to it on that ground.



(Testimony of Henry Clark Fredenburg.)

Trial Examiner Mouritsen: I will overrule the objection. It is already in evidence.

Mr. Whitelaw: We move to strike it on the ground——

Trial Examiner Mouritsen: On the ground you have outlined?

Mr. Whitelaw: Yes.

Trial Examiner Mouritsen: I will overrule the objection. In other words, it isn't offered as evidence, as I understand it, that this man actually signed it. He says it is just like one he did sign. It is material in that it purports to be an application and bargaining authorization for the union here involved.

Q. (By Mr. Ryan): Did you, Mr. Fredenburg, have a conversation with Mr. Pete Pool at any time after this time when you were up in the union hall that you just testified about?

A. Just once, he asked if I joined.

Q. When was it that you had the conversation?

A. It was just a few days after we were up there, I don't know exactly what date it was.

Q. That you were up at the union hall?

A. Yes, sir.

Q. And where did you talk with Pete Pool? [245]

A. In the engine room.

Q. At the Holtville Ice Plant? A. Yes, sir.

Q. Was anyone else present? A. No, sir.

Q. What was the conversation, what did you say and what did he say?

(Testimony of Henry Clark Fredenburg.)

A. He asked if I joined the union, and I told him yes.

Q. I believe you stated you were laid off, that you worked until sometime in October, 1941, for the company, is that right?

A. Yes, sir.

Q. The circumstances concerning the time that your employment terminated, tell us how it came about that you stopped working at that particular time?

A. I had an ice route and, of course, late in the fall you only run just part of the time, see, maybe twice a week, and then in between times, why, there is ice boxes to be delivered or picked up and we done—would work at that too. And I asked Mr. Smith if there was anything more to do?

Q. Who is Mr. Smith?

A. He is—well, office manager, I guess.

Q. Of the Holtville Ice and Cold Storage Company?

A. Yes. [246]

Q. Go ahead.

A. And he said not right then.

Q. When was this?

A. Well, it was in October—up until the 23rd, I didn't work all the time. I was running my ice route and working part of the time.

Q. Were you running this ice route for the company?

A. Well, really the way we bought the ice and sold it, but the company took care of all the tax on it.

(Testimony of Henry Clark Fredenburg.)

Q. When would you start buying the ice and then selling it? Will you explain that a little bit for us?

A. Start out in the summertime about sometime the last of March, first of April.

Q. You mean the truck drivers of the company would start then buying ice from the company themselves and selling it?

A. Yes, go out on your ice route.

Q. And, as I understand it, working part time for the company besides that, is that right?

A. Yes.

Q. During that slack season? A. Yes.

Q. All right.

Trial Examiner Mouritsen: What were you doing in that part time work for the company?

The Witness: We would either work on the sales platform [247] or deliver refrigerators or pickup, and up until the sheds quit we would haul ice, come in off our route, help all we could.

Q. (By Mr. Ryan): Will you tell us, Mr. Fredenburg, just what happened that you suddenly stopped working altogether for the company? That is what I want you to tell us about, just what occurred.

A. Why, I——

Q. Why is it you are not working for the company now, why did you stop working?

Trial Examiner Mouritsen: I thought he got as far as he went in to see Mr. Smith when things got rather slow. Is that right?

(Testimony of Henry Clark Fredenburg.)

The Witness: I asked Mr. Smith if there was any more work. He said, "No." So then I went back two or three different times and asked if I was going to get to haul ice, when they started up, to the packing sheds, and he always said he didn't know. One day I asked Mr. Willard——

Q. (By Mr. Ryan): When did you ask Mr. Willard? Try to fix it, approximately.

A. It was in December some time.

Q. Had the packing season started, vegetable packing season?

A. Yes, before it started.

Q. Was the Holtville Ice plant under way again?

A. Oh, yes.

Q. And where did you see Mr. Willard? [248]

A. In his office.

Q. Was anyone else present?

A. No, sir.

Q. Will you tell us what was said?

A. I asked him if I was going to get to haul ice, and he said he had no place for me, and I asked him what was the matter, if my work wasn't satisfactory, and he just said, "I have no place for you." I said, "That is funny, you have only had two drivers and you need more than that." He said, "Well, that is my business." That was all, and I left.

Q. And did you thereafter talk to him or any other representative of the company again?

A. No, I didn't.

Q. How many truck drivers were there working for the company when you were a truck driver employed by the company?



(Testimony of Henry Clark Fredenburg.)

Mr. Smith: What period do you mean, Mr. Ryan?

Trial Examiner Mouritsen: Tell us during the slack season how many truck drivers were there?

The Witness: Four drivers.

Trial Examiner Mouritsen: And during the busy season what was the largest number of drivers that were ever there while you were there?

The Witness: One season, I think, we had six.

Trial Examiner Mouritsen: How about the season, the last busy season you worked, were there six then or fewer than [249] that?

The Witness: I believe that that was the year we had six because they cut the hours down to forty hours a week.

Trial Examiner Mouritsen: That would be in the fall of 1940 and spring of 1941, is that right?

The Witness: Yes, sir. It really would be just in the spring of '41.

Q. (By Mr. Ryan): Then at the time that your employment terminated in the fall of 1941, how many other drivers had there been working for the company right up to that time? A. Three.

Q. Three. Including yourself?

A. No, four with me.

Q. Who are the other three?

A. Tom Herring, Pete Drinkard, Jess Cardwell.

Trial Examiner Mouritsen: Is that C-a-r-d-w-e-l-l?

The Witness: Yes, sir.

Mr. Ryan: I have no further questions.

(Testimony of Henry Clark Fredenburg.)

Cross Examination [250]

Q. Now, you never did apply for reinstatement, did you, Mr. Fredenburg, when the season commenced in the middle of December?

A. Yes, sir.

Q. To whom did you apply?

A. Mr. Willard.

Q. And that is the conversation you spoke of, he said he had no place for you? A. Yes, sir.

Q. Was that all that was said? [254]

A. Yes, sir.

Q. Didn't he tell you that the change over from the Diesels to the electric power, that he used as many men as he could? A. No, sir.

Q. Who did you say the other men were that were delivering clear ice in the summertime?

A. Tom Herring, Pete Drinkard and Jess Cardwell.

Q. Had they all stopped delivering clear ice about October 1st, the same as you did?

A. About the same time.

Q. It was all because there was no business?

A. Yes, sir.

Trial Examiner Mouritsen: Do you know why these other men quit, stopped delivering ice then?

The Witness: Do I know why?

Trial Examiner Mouritsen: Yes.

The Witness: Because they didn't have any place to sell it.

Mr. Smith: I think that is all.

Mr. Whitelaw: No questions.

(Testimony of Henry Clark Fredenburg.)

Redirect Examination

Q. (By Mr. Ryan): When the season started up again, do you know whether or not the other truck drivers went back to work? A. Yes. [255]

Q. Who were the ones that went back to work?

A. Pete Drinkard was the only one that was off at the time?

Q. Did he return when the season started up in the ice plant? A. Yes, sir.

Q. Cardwell and Herring, as I understand it, went right on working?

A. Herring worked for the company all the time and Cardwell worked on—bought his ice and sold it the same as the rest of us.

Q. Did he continue to buy ice and sell it after you had stopped in the fall of '41?

Q. Yes, he took all the routes in the wintertime every year and run them all winter. They run an ice route every winter.

Q. He wasn't one of the truckers that carried ice over to the vegetable sheds?

A. No, the only time he helped, maybe if we was short he might haul a few loads.

Q. You say Mr. Herring continued to work all the time? A. Yes, sir.

Q. Did he continue to truck ice after you had stopped there in the fall of 1941, or what did he do for the rest of the time until the plant started up again?

Mr. Smith: I object to that as calling for a con-

(Testimony of Henry Clark Fredenburg.)

clusion and opinion of the witness, if he wasn't there he wouldn't [256] know except by hearsay.

Trial Examiner Mouritsen: Let me have the question.

(Question read.)

Q. (By Mr. Ryan): If you know.

Trial Examiner Mouritsen: You can answer if you know.

The Witness: Yes, he delivered ice for a while and worked the platform. They had to have somebody on the platform for people that come to the plant for their ice. And then pick up refrigerators, they rent refrigerators to people.

Trial Examiner Mouritsen: How do you know he did these things after you left the plant? Did you see him do them?

The Witness: Yes.

Mr. Ryan: That is all.

#### Recross Examination

Q. (By Mr. Smith): Mr. Fredenburg, in previous years practically this same procedure had been followed, had it not, you had delivered ice to the sheds while the carrot packing season was in progress and you thereafter bought clear ice yourself and sold it to formers? A. Yes, sir.

Q. There was always a spell after you stopped delivering clear ice that you were off until the plant started up again late in December, is that correct? A. Yes.



(Testimony of Henry Clark Fredenburg.)

Q. For the reason that there was no ice business of any kind [257] from about October on, until the lettuce season started in December?

A. No, there was no ice business then. [258]

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EDWARD ACHSTETTER, JR.,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, please? A. Edward Achstetter, Jr.

Q. And where do you live, Mr. Achstetter?

A. El Centro.

Q. What is your occupation?

A. Secretary-Treasurer of the Truck Drivers, Warehousemen and Helpers Union 898.

Q. Is that organization affiliated with any other organization?

A. Affiliated with the International Brotherhood of Team- [267] sters, Chauffeurs, Warehousemen and Helpers, A. F. or L.

Q. How long have you held that position?

A. Since June, 1942.

Q. Who was the secretary-treasurer of that local before you became such? A. Ray Magness.

Q. As secretary treasurer, can you tell us whether or not the local keeps any record of people

(Testimony of Edward Achstetter, Jr.)

who make application for membership in the local and make any payment thereon?

A. Yes, sir, I do.

Q. What do you call that book?

A. Day book.

Q. And do you have any other book that records the same material?      A. Ledger.

Q. Has Local 898 got a ledger?

A. They have.

Q. Do you have it there?      A. Yes, sir.

Q. Will you look at it and tell me whether or not there is any record there regarding Perry J. Blankenship?

A. Perry J. Blankenship, there is a record.

Mr. Whitelaw: To which we object on the ground there is no proper foundation laid. He doesn't know whether the entries are made correctly or incorrectly or under whose [268] supervision they were made, all he has is the *bear* record; he is in no position to testify concerning these books.

Trial Examiner Mouritsen: Are these the official records of the union?

The Witness: These are the official records of the International.

Trial Examiner Mouritsen: Do you, as secretary-treasurer of the union, keep them?

The Witness: I am in complete charge of them.

Trial Examiner Mouritsen: I will overrule the objection. [269]

(Testimony of Edward Achstetter, Jr.)

Mr. Whitelaw: I presume, for the purpose of the record, we better withdraw our objection which we have heretofore made.

Mr. Smith: Those objections went to the signed applications, that still stands. I am willing to stipulate that you receive in evidence what your ledger shows.

Trial Examiner Mouritsen: Very well.

Mr. Whitelaw: That this witness testify.

Mr. Smith: That he can read into the record what the ledger shows.

Mr. Whitelaw: I so stipulate. Any other statement I made about withdrawing objections to them, I ask be stricken from the record.

Trial Examiner Mouritsen: Very well, they may be stricken.

Q. (By Mr. Ryan): Do you have the ledger in front of you of Local 898? A. I do.

Q. Does that record reflect anything regarding Perry J. Blankenship?

A. It is the only official record of his entrance into the Teamsters Union.

Mr. Whitelaw: Now, we would like to have the answer stricken as being a voluntary statement, not responsive to the question. We have stipulated, in order to save time [275] and as Mr. Magness isn't here, *he merely* testify as to what the record shows, without any comment. Don't you think that is correct, Mr. Ryan, and fair?

Mr. Ryan: Yes.

Q. (By Mr. Ryan): If there is anything in that

(Testimony of Edward Achstetter, Jr.)

ledger regarding Perry J. Blankenship, give the page number of the ledger.

A. On page 398 of the ledger it shows Perry J. Blankenship was initiated on February 9, 1942; paid \$5.00 on 12-2-41; \$3:00 on 1-12-42; and \$7.00—

Mr. Smith: Just a minute. I am trying to get them; \$3.00 on what date?

The Witness: 1-12-42.

Mr. Peterson: May I state that instead of Mr. Smith having to write all of them off, we will be perfectly willing, during the noon recess, to have copies made of each one of them so all counsel will have a copy of whatever is going in the transcript.

Mr. Smith: That is fair enough.

The Witness: Payment of \$7.00 made on——

Mr. Whitelaw: Now, Mr. Examiner, may we ask to have the words “completing his initiation fee” stricken, in view of our stipulation?

Trial Examiner Mouritsen: Well, yes, that may go out.

Mr. Whitelaw: Just in fairness to our stipulation. [276]

Trial Examiner Mouritsen: Yes.

Q. (By Mr. Ryan): I would like to ask you one question that doesn't have anything to do with the ledger. What is the initiation fee into the Teamsters Local 898?

A. At present—we have two initiation fees. A \$10.00 initiation fee for preliminary organization, and a \$25.00 standing initiation fee for all applicants under contracts.



(Testimony of Edward Achstetter, Jr.)

Q. How long has this been in effect?

A. I wouldn't know, the initiation fee and dues were changed before I came down here. I think it was early in '41—or early in '42.

Q. Do you know what they were immediately prior to that change?

A. \$15.00 initiation fee.

Q. Have you read everything from the record on Perry J. Blankenship?

A. No, it shows here he was issued a withdrawal card on 2-24-42; statement "going into defense plant in L.A."

Q. Is there anything else in that record?

A. That is all.

Q. Will you read the entry in that book on L. H. Davis, if there is one?

Mr. Whitelaw: Do you have the record there of the pages?

Mr. Ryan: Yes. 244.

Mr. Whitelaw: I suggest it would save time——

[277]

Trial Examiner Mouritsen: Off the record.

(Discussion off the record.)

Trial Examiner Mouritsen: On the record.

The Witness: L. H. Davis, on 10-3-41, paid \$10.00; that is the only record of him.

Q. (By Mr. Ryan): On George P. Drinkard, 227?

A. George P. Drinkard, paid \$5.00 on 9-26-41.

Mr. Whitelaw: What other record is there on there, Mr. Achstetter?

(Testimony of Edward Achstetter, Jr.)

The Witness: There is an abbreviation in pencil recording suspension.

Trial Examiner Mouritsen: "Requiring suspension."

The Witness: I can't understand. The auditor might have put that in there, or the girl checking through the dues. It is a ruling of the——

Trial Examiner Mouritsen: Here is my question: Merely indicate what the record says. It has "s.u.s." which is what, the abbreviation for suspended?

The Witness: I imagine it is, I don't know.

Trial Examiner Mouritsen: No date?

The Witness: No date.

Q. (By Mr. Ryan): Would you read the record on Henry Clark Fredenburg at page 225 of the record?

A. Henry C. Fredenburg paid \$5.00 9-26-41.

Mr. Whitelaw: What other record is there on that? [278]

The Witness: There is a notation in pencil, abbreviation, I imagine, of suspensian, "s-u-s"; no date.

Q. (By Mr. Ryan): On Herman Fruhn, 224, of the ledger?

A. Herman Fruhn paid \$1.00 on 9-26-41; paid \$5.00 on 10-3-41; abbreviation in pencil, marked "s-u-s", no date.

Q. Lester C. Hart, page 226.

A. Lester C. Hart paid \$1.00 on 9-26-41.

Mr. Whitelaw: And the notations?

(Testimony of Edward Achstetter, Jr.)

The Witness: Notation in pencil, "s-u-s" no date.

Q. (By Mr. Ryan): Howard H. Ireland?

A. No record of Ireland.

Q. H. G. Miller, 228?

A. H. G. Miller paid \$1.00 9-26-41. Notation in pencil, "s-u-s", and no date.

Q. Herman T. Pool, 223.

Trial Examiner Mouritsen: Pool's testimony is already in with respect——

Mr. Ryan (Interrupting): We might as well complete the ledger.

The Witness: On 9-26-41 paid \$5.00; on 10-3-41 paid \$5.00; on 10-14-41 paid \$5.00; withdrawal card.

Q. (By Mr. Ryan): Totaled up there——

A. Total of \$15.00. Withdrawal card issued October 31, '41. Deposited withdrawal card again on 8-6-42.

Trial Examiner Mouritsen: It shows various dues payments [279] since that time?

The Witness: Yes, paid dues——

Trial Examiner Mouritsen: Never mind going into detail. As a matter of fact, the main thing I am interested in is the initial date of payment as reflected in the book.

Q. (By Mr. Ryan): Arthur Standifer, 230.

A. Arthur Standifer paid \$15.00 10-3-41.

Mr. Whitelaw: And the other notation?

The Witness: The other notation is "s-u-s"; no date.

(Testimony of Edward Achstetter, Jr.)

Q. (By Mr. Ryan): M. K. Stout, 229?

A. M. K. Stout paid \$15.00 10-3-41. There is a list of dues paid, October, November and December, 1941, and January, February, March in 1942. And a notation written on here in pencil, "s-u-s"; no date.

Q. Do you have any notation in your ledger regarding Tom Herring?

A. No, there is no—he never paid any money at all.

Q. I see. As I understand it, it is only those who have paid money that would be in that book?

A. That is right. [280]

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GEORGE R. HARLAN,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ryan): Mr. Harlan, will you state your full name, please? A. George R. Harlan.

Q. Where do you live, Mr. Harlan?

A. Holtville, California.

Q. Mr. Harlan, were you ever employed by Holtville Ice and Cold Storage Company?

A. Yes, sir.

Q. When were you first employed and how long did you continue in the employ of that company?

A. I was employed, I think, some time in 1938,



(Testimony of George R. Harlan.)

in the spring, I believe, and I am still under the employ of them.

Q. When you were first employed by the company, Mr. Harlan, what position did you occupy?

A. In the store room. [290]

Q. Working in the store room?

A. Working in the store room.

Q. And how long did you continue on that particular job?

A. I don't remember exactly, I think approximately the two winters.

Q. Then after you had done that, Mr. Harlan, what other job did you perform thereafter?

A. I pulled ice for a while. I don't remember just how long, I think I started that in the spring.

Q. Would that be the spring of 1942?

A. That was in the spring of—I guess it would be, I wouldn't remember exactly. Let's see, this is '43; I guess that was in the spring of 1941.

Q. How long did you continue on that job?

A. I finished that season on that job, just a short period.

Q. Then what did you do?

A. Well, I was in that fall, I went in as operator, that was pulling ice and operating the compressors.

Q. And you continued on that job until when?

A. I am still on that job.

Q. You still are. Just about when did you start on that job, that last job you have just mentioned?

(Testimony of George R. Harlan.)

A. That was either—I think the latter part of October.

Q. Of what year? A. 1941. [291]

Q. Mr. Harlan, did you ever have a conversation with Mr. Hugh T. Osborne?

A. Yes, sir.

Q. When did you first have the conversation with him?

A. I think that was probably in October of 1941.

Q. Where did the conversation take place?

A. At my home.

Q. Was anyone else present during the conversation, other than you and Mr. Osborne?

A. No one else—I think my wife was there, that is all.

Q. Can you tell us how Mr. Osborne happened to be at your home on that occasion?

A. No, not exactly. He came—I can, too, I guess. He came to the house and knocked at the door and I asked Mr. Osborne in, and he says, “I guess you know my business here.” And I says, “Well, I don’t know. I know what you do, but I don’t know what your business is here.” I don’t know that that is the exact words, it was approximately that. He says, “I am representing the Associated Farmers.” He says, “I wanted to find out something about the union action at the ice plant and I was told I could come here and talk to you.” And I told him that he could, that I had no secrets myself. And he asked me about

(Testimony of George R. Harlan.)

the men that went into the union, and I told him that some of them had gone into the union; I don't know now whether I told him who they were or [292] not, or whether I knew all of them that had gone. And I also told Mr. Osborne I wasn't in favor of going in the union and asked him the question what could be done to keep from going in. And he spoke about the Association some of the places have here in the Valley, and I had read about some of those in the papers.

Q. Did he indicate what kind of associations?

A. He just explained it as approximately what it was. It was practically along the same lines as a union.

Q. Did he mention the names of some associations, employees' associations in the Valley?

A. Yes, he did, he mentioned the name of Kramer's and I think possibly some of the others. I wouldn't say about them.

Q. Kramer, is that Kramer Baking Company?

A. Kramer Baking Company, I believe.

Q. A company doing business here in the Valley, is it?

A. Yes, sir.

Q. What did he say about those associations, if anything?

A. He just told me that we could operate one of those there if we cared to, and it would take the place of the union, we could have our bargaining rights.

Q. Did he say anything else on that occasion, Mr. Harlan, that you can remember?

(Testimony of George R. Harlan.)

A. I think I asked Mr. Osborne if he could get me a copy [293] of one of those associations, and he said he would try. And a few days later, anyway, I don't know whether it was a few days, I don't remember now, I did meet Mr. Osborne and he gave me a copy.

Q. Where did you meet him a few days later, Mr. Harlan?

A. It was on the street, I think; he gave me the copy.

Q. In Holtville?            A. In Holtville, yes, sir.

Q. Did you meet him by appointment?

A. No.

Q. Just happened to bump into him?

A. I suppose just happened to meet him.

Q. On that occasion you say he gave you some—what did he give you?

A. I think it was a copy of Kramer Bakery's Association or part of the copy of it, or something, and it seems to me like there was another one; and I won't say for sure about that.

Q. Did anything else take place at the meeting when you saw Mr. Osborne on this occasion down town in Holtville that you just now testified to?

A. I don't think there was in particular. We talked a while, but what the conversation was, I couldn't say now.

Q. Did you take the material with you that he had given you [294] on that occasion?

A. Yes, sir.



(Testimony of George R. Harlan.)

Q. Then what did you next do, Mr. Harlan, with reference to that material, if anything?

A. I think I talked to some of the boys. I talked to Mr. Herring.

Q. Tom Herring? A. Tom Herring.

Q. Is he an employee of the Holtville Ice & Cold Storage Company? A. Yes, sir.

Q. He was at that time?

A. He was at that time, yes, sir.

Q. Where did you talk to Mr. Herring?

A. I went to his house to talk to him.

Q. And when was that, approximately?

A. I don't remember whether it was the same evening or the next day, it was shortly after I got the papers.

Q. This, as I understand it, was all in the early part of October?

A. I think approximately in October some time.

Q. And what did you talk about at Mr. Herring's home when you were there? Was anyone else present besides you and Mr. Herring?

A. No, just I and Mr. Herring. [295]

Q. What was the subject of the conversation?

Mr. Whitelaw: I feel this is pretty much hearsay. On behalf of respondent Associated Farmers and Hugh T. Osborne, I think it would be pretty much hearsay. I don't know how far you go on the question of hearsay.

Trial Examiner Mouritsen: I will permit him to testify, there may be some connection.

(Testimony of George R. Harlan.)

Mr. Whitelaw: If it isn't hearsay, I don't know what is hearsay.

Trial Examiner Mouritsen: What are you basing your objection on, upon the ground it is conversation which takes place out of the presence of any representative of the Associated Farmers or any of the other respondents?

Mr. Whitelaw: Yes.

Trial Examiner Mouritsen: I will overrule the objection and permit the witness to answer. Tell us what you said to Herring and what he said to you.

The Witness: What was the question?

Q. (By Mr. Ryan): On this occasion when you met at Mr. Herring's home, after you had gotten this material from Mr. Osborne, you just testified about, what did you say and what did Mr. Herring say?

Mr. Whitelaw: I make my objection to this question, and the same ruling applies, I presume?

Trial Examiner Mouritsen: Yes. [296]

The Witness: Why, I just—I showed him the papers I had and asked him what he thought about it. And I really couldn't remember just the words that passed between us there, but we talked a few minutes there and I went on back home.

Q. (By Mr. Ryan): Thereafter did you have any further conversations with anyone about this material that you had in your hand, this Association, Employees Association material?

A. Yes, I had conversations with several of the

(Testimony of George R. Harlan.)

other employees, I couldn't say just which ones now.

Q. When did you talk to them?

A. I think it was about that same time, it may have been the same day. I don't know. A day or two later I talked to some of them.

Q. Where did the conversations take place, Mr. Harlan?

A. Well, at different places. I think I talked to Mr. Standifer.

Q. Was that Art Standifer?

A. Art Standifer. And I believe he was at the plant at the time.

Q. Working? A. Working, yes.

Q. What did you say to him, if you can recall?

A. I just asked him—I just asked him what he thought [297] about that.

Q. About these associations?

A. About the association.

Q. Talking about employees association?

A. The employees association, and he told me, he says, "I don't know." And then I think he referred me to Herman Pool; he says, "Whatever he says about it."

Q. Then did you talk to Herman Pool?

A. I don't remember that I talked to Herman Pool or not, I wouldn't say for sure.

Q. Did you have the material with you when you were talking to Standifer, the employees association material that you had received from Mr. Osborne?

(Testimony of George R. Harlan.)

A. I think I did have, but I don't think he looked at it. I think I just had it in my pocket. I wouldn't say positive to that, though.

Q. Did you talk to any other employees?

A. Yes, I talked to some of the others, but I couldn't recall just who they are now.

Q. Was it the same time you talked to Standifer?

A. The same evening, the same evening I talked to Herman Fruhn.

Q. Was that also at the plant?

A. Yes, it was also at the plant, in the dressing room. He was getting ready to go home at the time, I believe. [298]

Q. Did you thereafter have a meeting at your home?      A. Yes.

Q. When did that meeting take place, approximately?

A. I think that was the latter part of October.

Q. 1941?      A. 1941, some time in October.

Q. Who was present at that meeting, if you can remember?

A. I don't know that I can recall, but there were six or seven boys there. Mr. Stout—

Q. Would that be M. K. Stout?

A. M. K. Stout.

Q. Was he an employee of the company at that time?

A. Yes, sir. And Richard Ireland.

Q. How do you spell that? Is that I-r-e-l-a-n-d?

A. I-r-e-l-a-n-d, I think, I wouldn't say for



(Testimony of George R. Harlan.)

sure; I don't know. And I believe Pete Drinkard was there.

Q. Were any other employees there besides those?

A. Yes, there were some more there. I can't recall their names just now.

Q. Approximately how many were there altogether?

A. I think there was approximately seven.

Q. Had this meeting been called by someone at your home?

A. I asked the boys to come.

Q. How had you notified them, Mr. Harlan, to come to your home to this meeting? [299]

A. Personally.

Q. Contacted them personally?

A. Yes.

Q. And where had you contacted them?

A. In different places.

Q. Had you contacted any of them at their work in the plant?

A. I don't remember that I did, no.

Q. What took place at the meeting—first of all, who was in charge of the meeting, if anyone was, at your home?

A. I don't know that anyone was in particular, unless it would be called myself. I asked the boys to come to my house, and I had asked Mr. Osborne to come in and explain the association to us.

Q. Was he present at the meeting?

A. He came later, after the boys did, and stayed a little while and then left.

(Testimony of George R. Harlan.)

Q. What did Mr. Osborne do and say at the meeting, if anything?

A. Well, I don't remember just exactly what he said. He just explained the ways of the association.

Q. And now, do you have reference to employees association?

A. Employees association, yes, sir.

Q. And what did he say in that regard, in substance, if you can't remember his exact words?

A. Well, I think that it was—I couldn't say just what [300] was said, but he explained the organization and the ways to organize it. And that is about all I could say about it.

Q. Did you have any material there at the meeting on the associations?

A. We had these copies I had before this.

Q. Can you tell us a little more definitely what kind of material it was, just what was the nature of this association material that you had?

A. The nature of the association material was the constitution and by-laws, I presume are approximately what Kramer Bakery Company had.

Q. And was any explanation or reading of that material done at the meeting by anyone?

A. I don't remember whether it was or not.

Q. Is that approximately all that occurred at that meeting that you can think of?

A. I think it was, approximately.

Q. Thereafter, did you have occasion to attend a meeting at M. K. Stout's home?

(Testimony of George R. Harlan.)

A. Yes, sir.

Q. Approximately when did that meeting occur with reference to the one you had in your home?

A. That was later that that meeting occurred, a few days later, approximately, oh, I would say maybe four or five days, a week, something like that. [301]

Q. And who was present at that meeting, if you know?

A. Let's see, Mr. Stout and Lloyd Gettle.

Q. Was Mr. Gettle an employee of Holtville Ice Company at that time?

A. Yes, sir. And I think Richard Ireland was there. [302]

Trial Examiner Mouritsen: Off the record.

(Discussion had off the record.)

Trial Examiner Mouritsen: On the record.

The Witness: There was another one or two there, I don't remember just now who they were.

Q. (By Mr. Ryan): Were they employees of the company? A. I think so, yes.

Q. Was Mr. Osborne present? A. No.

Q. Who called this meeting at Mr. Stout's home, if you know, if anybody did?

A. Well, I don't know as anybody in particular, we just kind of decided on having it there, several of us together.

Q. Was anyone in charge of the meeting?

A. I don't remember just who was in charge of the meeting. I think maybe Mr. Stout was, I don't know.

(Testimony of George R. Harlan.)

Q. What was said and done at that meeting by the individuals present, if anything, to indicate who did what or said what?

A. Well, the officers for the Association were elected at that meeting.

Q. How were they elected, Mr. Harlan?

A. Just by a verbal vote.

Q. Who were elected officers?

A. I was elected president and Tom Herring was elected vice-president and M. K. Stout was elected secretary- [303] treasurer.

Q. How was that vote taken? How did they vote?

A. Well, I couldn't say just exactly how we voted.

Trial Examiner Mouritsen: A voice vote?

The Witness: Voice vote.

Q. (By Mr. Ryan): What was the total number of employees of the Holtville Ice Company who were present there, if you can remember?

A. I don't remember, but I think there was about six or seven.

Q. Was anything done, other than the election of officers for the Association on that occasion?

A. I don't remember. Let's see, yes, I think we kind of got together on a wage scale, I think, and made——

Q. Was anything done regarding a constitution and by-laws?

A. No, we had taken the by-laws of the—I don't know whether there was anything done at all about



(Testimony of George R. Harlan.)

the by-laws at that particular time or not; I wouldn't say for sure.

Q. Up to that point had you adopted any by-laws or constitution?

A. Only the ones we had the copy of.

Q. Did I understand you to say you had discussed wage scales?      A. I think we did, yes.

Q. Did you put anything down in writing regarding wage [304] scales and working conditions?

A. Yes, it was made out there, part of it, at least, was made out that night.

Q. What was made out that you can remember? I mean what was the nature of the proposals that you made out, what did they pertain to?

A. It pertained to a summer's vacation and our wages and hours.

Q. Was that about all that took place at that meeting, that you can remember?

A. That is it approximately, that I can recall.

Q. After that meeting was anything done with those proposals that had been drafted in that meeting?      A. Yes, sir.

Q. What was done with them?

A. I taken the proposals to Mr. Willard.

Q. When did you take them to Mr. Willard?

A. I think it was a day or so after the meeting.

Q. In M. K. Stout's home?

A. After the meeting in M. K. Stout's home.

Q. Where was Mr. Willard when you got the proposals to him?

A. In his office at the ice plant.

(Testimony of George R. Harlan.)

Q. Was anyone else present?

A. No, I don't believe there was.

Q. Did you have a conversation with Mr. Willard on that [305] occasion?

A. A short conversation, yes.

Q. What did he say and what did you say on that occasion?

A. I took the proposals in to Mr. Willard and laid them on his desk, and he asked me a number of questions about the Association and who was the officers and what they were planning on doing. And then he looked at the proposal and he said he couldn't use that proposal at all. So I left the proposal there and told Mr. Willard to look it over at his disposal and let me know what he thought about it. I think a few days later, approximately a week, Mr. Willard called me in and gave me a counter proposal.

Q. What did his counter proposal cover, what subject matter?

A. It was practically the same as we had given him, with a few changes in it. We had asked for a few days sick leave, I believe, on our proposal, which he didn't have on his. And then he had changed the wage scales on there and, as I remember, that was about all the changes there was on it.

Q. When you went to his office, with these proposals which you gave him, did Mr. Willard ask you at that time to give him any evidence as to the membership of the Association?

(Testimony of George R. Harlan.)

A. He asked me what the Association was, what it consisted of, and what the name of the organization was. And who [306] the officers were in it.

Q. What did you tell him?

A. I told him who the officers were and the name of the organization, explained it to him as best I could.

Q. Did he make any inquiry as to whether or not you had a majority signed up or not?

A. I think he did, I am not sure, but I think he asked me how many was signed up on it.

Q. Did you submit any evidence, any documentary evidence to Mr. Willard, Mr. Harlan, as to the membership of the Association?

A. I don't think I did any more than by word.

Q. Then you say a few days after that you received some counter proposals from him. Can you indicate whether that was still in the month of October, 1941? Just when was that?

A. I wouldn't say positive, but I believe that was a day or two after the 1st of November. Possibly could have been the latter days of October.

Q. Then after you had received the proposals from Mr. Willard that you just testified about, was there a meeting held at your home?

A. Yes, sir.

Q. When was this meeting held at your home?

A. That was, I think, in the first part of November. [307]

Q. And who was present at that meeting, Mr. Harlan, if you can remember?

(Testimony of George R. Harlan.)

A. I wouldn't say, but I think it was approximately the same amount of boys, the same ones that was at the other meetings.

Q. How many was that, about, six, you say?

A. About seven, I think.

Q. And who had called that meeting, if anyone had?

A. I did.

Q. How did you notify the boys to be in attendance at the meeting?

A. Just verbal.

Q. Word of mouth?

A. Yes.

Q. Where did you contact them to notify them there would be a meeting at your home?

A. Well, I couldn't say that, I think it was just different places, probably.

Q. Were any *contracts* made while they were on the job, working at the plant?

A. I really couldn't say.

Q. At this meeting in your home we are now talking about, was Mr. Osborne present?

A. Yes, Mr. Osborne came to that meeting. I asked Mr. Osborne to come to help us start the books, show us how to [308] start the books off, and Mr. Osborne came to that meeting, and I don't think he was there but a few minutes; he showed us how to write the minutes up, started the minutes off.

Q. The minutes of the Association, this employees' association?

A. Yes, sir, explained it to us, and then he left.

Q. And then after he had done that and left, did



(Testimony of George R. Harlan.)

the people who were present conduct any further business?      A. Yes, sir.

Q. What was the business conducted at that meeting, what was said and what was done by the individuals present?

A. Part of the business was deciding on the dues and initial fees.

Q. Initiation fees?      A. Yes, sir.

Q. Was any decision reached on that?

A. Yes, sir.

Q. What decision was reached on that? [309]

The Witness: I think the dues were set at one dollar a month and the initial fee was set, for the charter members, at five dollars and twenty-five for new members.

Q. (By Mr. Ryan): Thereafter did the Association of employees have any contact with Mr. Willard, after this meeting you have just talked about?

Trial Examiner Mouritsen: I would like to know what happened to the counter proposal.

Mr. Ryan: Oh, yes. [310]

Q. (By Mr. Ryan): What did you do with the counter proposal after you obtained it from Mr. Willard, Mr. Harlan?

A. We had another meeting.

Trial Examiner Mouritsen: That wasn't discussed at this meeting you just told us about?

The Witness: I don't remember, I think that was the same meeting that we discussed some of that. I wouldn't say positive, it has been too long ago.

(Testimony of George R. Harlan.)

Q. (By Mr. Ryan): What discussion was had on the proposals?

A. Well, we discussed the proposals that Mr. Willard had gave us and if I remember we made some changes in that and went back to Mr. Willard with it. It seems to me as though we went back and forth two or three times there, I don't remember just exactly how many times.

Q. When did you have your first meeting with Mr. Willard on the counter proposal which he had given you and which you had made some changes in?

A. That was pretty quick after we had that meeting. I don't remember, in a day or so, I think.

Q. With reference to a date, was it in October or November? A. That was in November.

Q. What part of November?

A. First part of November.

Q. Where did the meeting with Mr. Willard take place? A. In his office. [311]

Q. Who arranged for the meeting?

A. I think that I did. I gave Mr. Willard the proposals *we taken* back to him, and told him to study them over and call us in, and he set the day when we could come in. I think it was an evening or two later I gave them to him.

Q. At the time you did then go in and meet with Mr. Willard, who was present?

A. I think there was at that time practically all the employees. There must have been, probably

(Testimony of George R. Harlan.)

ten there; there might have been a couple of the boys out on duty.

Q. What time of day was it?

A. It was in the evening.

Q. About what time?

A. At approximately, oh, I will say maybe 7:00 o'clock.

Q. 7:00 o'clock. Was the plant operating at the time? A. Yes, sir.

Q. Was there a shift which would be working normally during that period?

A. There was a shift working.

Q. How many shifts was the plant running at that time?

A. I think they was running the three shifts.

Q. Were there men in the office on that occasion when you met with Mr. Willard who would normally have been working in the plant?

A. I don't know whether there were in the office or not. [312]

Q. Was there anyone present on behalf of the company, other than Mr. Willard?

A. I believe Mr. Smith—I don't remember whether he was at one or two of those meetings we had with Mr. Willard.

Q. And what took place at this meeting in Mr. Willard's office?

A. We just discussed the proposals and finally came to an agreement on them in the last meeting we had with Mr. Willard at that time.

Q. How many meetings did you have?

(Testimony of George R. Harlan.)

A. I won't say for sure, but it was probably two or three or four, I don't know exactly.

Q. Was Mr. Osborne in attendance at any of those meetings in which you were negotiating with Mr. Willard?

A. Not when the whole Association met with Mr. Willard.

Q. Did he attend at any time?

A. Mr. Osborne was in the office at one meeting there when he was—when there was two or three of us in there with Mr. Willard, I don't remember just what meeting that was, I couldn't say.

Q. One of the meetings when you were negotiating?

A. It was while the negotiations were going on, yes. [313]

Q. You did eventually come to an agreement on a contract?

A. Yes, sir.

Q. And approximately when was that that you arrived at your agreement with the company?

A. That was in, I think in November, I don't know. I [315] guess it was probably the first part of November some time, or one of those days, as I say, we went back and forth several times. I couldn't say just the day or how far it had gotten into November.

Q. At the time you began negotiating with Mr. Willard, or the time you presented your proposals to him the first time, how many people had become members of the Association, employees' association?



(Testimony of George R. Harlan.)

A. I think that approximately all of them, there might have been one or two that wasn't signed up that was employed there at the time.

Q. About how many was that?

A. It was about a dozen, I guess.

Q. Up to that time, according to your testimony, I believe there were six or seven that ever attended any meetings up to that time, isn't that right?

A. Yes, there was hardly all of them ever made the meeting.

Q. Did the Association have a regular negotiating committee?

A. They did have, yes.

Q. How was that committee selected?

A. By a verbal vote.

Q. When was it selected, do you know or remember?

A. I don't know whether that was selected, all of them, at the night we had the meeting of the—elected the officers, but it seems to me as though they were. I think [316] they were elected that night, but I am not positive, though.

Q. Who was selected, by the way, on this negotiating committee?

A. Lloyd Gettle and Pete Drinkard, I believe, and then the three officers.

Q. There were about five present?

A. There were five.

Q. Who was elected on the negotiating committee, Mr. Harlan?

A. Lloyd Gettle and Pete Drinkard.

(Testimony of George R. Harlan.)

Mr. Yeager: He already answered that by saying two men, plus the elected officers.

Mr. Smith: Plus the three officers.

Q. (By Mr. Ryan): The three officers plus the two men constituted the negotiating committee?

A. Yes.

Mr. Ryan: I think I will offer this one and withdraw it and put in the copy.

Miss Reporter, will you mark this Board's Exhibit 5.

(The document referred to was marked as Board's Exhibit No. 5, for identification.)

Mr. Examiner, I now have here the original of the contract between the Holtville Ice and Cold Storage Company employees Association and the Holtville Ice and Cold Storage Company, and I am going to present that to the witness for identification in lieu of the copy of the contract which [317] I previously referred to on the record as Board's Exhibit 5 for identification, so there won't be any confusion.

Trial Examiner Mouritsen: Do you stipulate, Mr. Smith, this is a true and correct contract entered into between the company and the Association?

Mr. Smith: That is the original, yes.

Mr. Ryan: Which became effective as of November 1st, 1941.

Mr. Smith: Yes.

Mr. Ryan: That contract is signed on behalf of the Holtville Ice and Cold Storage Company by

(Testimony of George R. Harlan.)

F. A. Willard, as president, and on behalf of the Holtville Ice and Cold Storage Company Employees' Association by George R. Harlan, president; by Tom F. Herring, its vice-president; and by M. K. Stout, its secretary and treasurer.

Trial Examiner Mouritsen: That is stipulated?

Mr. Smith: Yes.

Mr. Ryan: I offer it in evidence as Board's Exhibit 5, with the proviso that we can withdraw the original and substitute a copy therefor.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Smith: No.

Mr. Whitelaw: No.

Trial Examiner Mouritsen: It is received in evidence [318] as Board's Exhibit 5, and the substitution can be made for it.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 5, was received in evidence.)

## BOARD'S EXHIBIT No. 5

### AGREEMENT

This Agreement, made and executed this first day of November, 1941, by and between the Holtville Ice & Cold Storage Company, and its Successors and Assigns, hereinafter referred to as the Employer, the singular to include the plural, and the Holtville Ice & Cold Storage Company Employees Association, hereinafter referred to as the Association.

(Testimony of George R. Harlan.)

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Company, and situated in Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representatives of the employees of the Holtville Ice & Cold Storage Company,

Now, therefore, for an in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

1. The Employer recognizes the Association as the sole and exclusive representative of the employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspension of work by Association members during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement shall be settled by arbitration in the following manner: Each party shall appoint two representatives who



(Testimony of George R. Harlan.)

may decide the issue by a three-fourths vote, which shall be final and binding on the parties, or failing to so agree, shall by a three-fourths vote elect a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Forty hours shall constitute a week's work.

7. The wage scale shall be as follows:

		Approximately Monthly earnings	
		40 hrs. week	48 hrs. week
Operators			
First year .....	66½c	\$115.00	\$150.00
Second year .....	69c	119.00	155.00
Third year .....	72c	125.00	162.44
Store Room and Platform			
First year .....	57½c	99.48	130.00
Second year .....	60c	103.80	135.00
Third year .....	62c	107.00	140.00

Delivery of Vegetable Ice

\$.0833 cents per ton on forty hour week.

Relief man shall be on the higher scale of wages of the two scales involved. Extra help and common labor, without experience, shall be paid 55c per hour on a forty hour week. There shall be no deductions other than directed by State, Federal and City authorities.

8. An employee having a year's record of employment with the Company will be granted two weeks' vacation with pay. No sick leave is granted but

(Testimony of George R. Harlan.)

each case will be decided on its merits by the Association and the Company.

9. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

10. This Agreement shall remain in full force and effect up to and including the first day of November, 1942, and continue thereafter from year to year unless one party notifies the other in writing ninety days in advance of the expiration date, of a desire to change the conditions of this agreement.

11. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph six hereof.

12. It is understood and agreed that in the event mandatory laws or governmental rules or regulations applicable to, or in conflict with any of the provisions of this agreement, shall become effective and binding upon the parties hereto with respect to such conflicting provisions, this Agreement, shall be subject to modification to the extent required thereby.

13. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

14. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

15. The Employer agrees to make payroll deduc-

(Testimony of George R. Harlan.)

tions for monthly dues and fees of the Association members in such amounts as the Association may direct, upon being furnished with membership authorization forms properly signed by the member and the Secretary of the Association, and such collections will be paid over to the Association monthly. Provided, however, that the Employer will be under no obligation to make a payroll deduction for any employee after the Employer has been notified in writing by the Secretary of the Association and the member involved that such employee no longer wishes deductions made. All such deductions so made by the Employer are to be considered as an advance payment of the dues of the Association member for the ensuing monthly period.

16. Any person becoming an employee of Employer shall within fifteen days become and remain a member in good standing of the Association.

17. No existing privileges which have hereto been extended to the employees shall be terminated by the signing of this agreement.

18. Employer shall have the right to discharge, without redress, for dishonesty, drunkenness, drinking on duty, or incompetence.

19. The Employer shall supply bulletin board space for the use of the Association in posting officially signed Association bulletins.

(Testimony of George R. Harlan.)

In Witness Whereof, the parties hereto have set their hands.

HOLTVILLE ICE AND COLD  
STORAGE COMPANY

By F. A. WILLARD

Its President

HOLTVILLE ICE AND COLD  
STORAGE COMPANY EM-  
PLOYEES ASSOCIATION

By GEO. R. HARLAN

Its President

By TOM F. HERRING

Its Vice-President

By M. K. STOUT

Its Secretary-Treasurer

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Mr. Ryan: I might say I shall write in the name of the signatories of the contract so it will appear who did sign it. [319]

Q. (By Mr. Ryan): Can you tell us, Mr. Harlan, if all employees of the company have been covered by the terms of that contract?

A. Well, all employees of the Association have, all the employees of the company don't belong to it.

Q. What employees of the company have not been covered by the contract?

A. The foremen and superintendents.

Q. Have office employees been covered?

A. One of the lower office employees was, yes.



(Testimony of George R. Harlan.)

Q. And how many office employees are there, do you know, or how many were there at the time the contract was entered into, if you know?

A. I guess Mr. Smith and one boy that worked part time.

Q. Was Mr. Smith covered by the contract?

A. No. [320]

Q. (By Trial Examiner Mouritsen): How was it straightened out? [323]

A. He left the employ of the ice plant.

Q. What did Mr. Willard say to you after you explained the matter to him?

A. I think Mr. Willard asked me what was wrong, if the boy—if they wanted to get rid of him. I told Mr. Willard there wasn't anything wrong with the boy, only he didn't want to join the Association, he was a good man.

Q. Then what did Mr. Willard say?

A. I don't remember that Mr. Willard said anything more to me about it, whether there was any more words passed or not between I and Mr. Willard.

Q. Did Mr. Willard tell you that he would take care of the situation?

A. Yes, I guess he did, he told me that.

Q. But you don't know whether he discharged the man or not following that conversation?

A. I presume he was, yes.

Q. Do you have a pretty good idea he did discharge him?

A. Yes.

(Testimony of George R. Harlan.)

Q. (By Mr. Ryan): This contract which ran for a year, as I understand it, this is in evidence as Board's Exhibit 5, was it renewed at the end of one year? A. Yes, sir.

Q. And how long will it run for now, since it has been renewed? [324]

A. I believe it is written practically the same, to run until—for one year or longer if both sides is satisfied.

Q. Were any negotiations had between the company and the Association with respect to continuing the agreement which was to terminate on November 1st, 1942?

A. There was some changes made in it on October 1st, 1942.

Q. Did you sit in on any negotiation at that time? A. Yes, sir.

Q. When did the negotiations occur for the renewal?

A. I think they occurred around—I guess they was in the first part of November they started, the negotiations, however, was—Mr. Willard was notified about the 1st of August, I believe, that we wanted to make some changes in the agreement. I think it was completed in the first part of November.

Mr. Smith: I have the contract of the 1942 agreement if you want it, Mr. Ryan.

Mr. Ryan: Perhaps we should have it in evidence also.

Mr. Smith: It is the original.

(Testimony of George R. Harlan.)

Mr. Ryan: I will have to withdraw it and make a copy.

Miss Reporter, will you mark this document as Board's exhibit next in order?

(The document referred to was marked as Board's Exhibit No. 8, for identification.) [325]

Mr. Ryan: Will counsel stipulate that I have marked for identification as Board's Exhibit 8 the document which is an agreement between the Holtville Ice and Cold Storage Employees Association and the Holtville Ice and Cold Storage Company covering wages, hours and working conditions, signed by F. A. Willard as president, for the company, and for the Holtville Ice and Cold Storage Employees Association by George R. Harlan, president; by George P. Drinkard, Jr., its vice-president; by M. K. Stout, its secretary-treasurer; and that the agreement by its terms became effective the 1st day of November, 1942.

I don't see where it says how long it is to run.

Mr. Whitelaw: Paragraph 10.

Mr. Ryan: And that paragraph 10 of the agreement sets forth the terms of its effectiveness.

Can that stipulation be had?

Mr. Smith: To the 1st of November, 1943.

Mr. Ryan: 1st day of November, 1943.

Mr. Smith: Yes.

Mr. Ryan: And to continue thereafter, from year to year, unless one party notifies the other in writing 90 days in advance of the expiration date, of a desire to change the conditions of this agreement.

(Testimony of George R. Harlan.)

Trial Examiner Mouritsen: Is that stipulated?

Mr. Smith: Yes. [326]

Mr. Petersen: One point I didn't raise on Board's 5, I am going to on Board's 8. It is an undated document, there is no date on it.

Trial Examiner Mouritsen: You mean no date of expiration?

Mr. Petersen: No date of expiration, there wasn't on Board's 5, either.

Trial Examiner Mouritsen: We can't change that fact, we have to accept the documents as they are.

Mr. Smith: I haven't seen it to read it, I doubt if Mr. Petersen has.

Mr. Ryan: I offer Board's Exhibit 8 in evidence.

Trial Examiner Mouritsen: Is there any objection to the offer?

Mr. Whitelaw: We have no objection.

Mr. Smith: It is the original; I presume it may be entered with copies to be filed and the original returned to Mr. Harlan.

No objection.

Trial Examiner Mouritsen: I will receive it in evidence as Board's Exhibit 8.

(Thereupon the document referred to, heretofore marked for identification as Board's Exhibit No. 8, was received in evidence.) [327]



(Testimony of George R. Harlan.)

BOARD'S EXHIBIT No. 8

Agreement

This Agreement, made and executed this first day of November, 1942, by and between the Holtville Ice & Cold Storage Company, and its Successors and Assigns, hereinafter referred to as the Employer, the singular to include the plural, and the Holtville Ice & Cold Storage Company Employees Association, hereinafter referred to as the Association.

Witnesseth: That whereas both of the above-named parties desire to enter into an agreement respecting wages, hours, working conditions, and other matters affecting operation of that certain business known as Holtville Ice & Cold Storage Company, and situated in Holtville, State of California, and

Whereas, the Employer hereby is willing to recognize the Association as the representatives of the employees of the Holtville Ice & Cold Storage Company,

Now, therefore, for and in consideration of the mutual covenants to be kept and performed by each of the parties hereto, it is understood and agreed as follows:

1. The Employer recognizes the Association as the sole and exclusive representative of the employees of the Employer for the purpose of collective bargaining during the life of this agreement.

2. The Association agrees not to engage in sympathetic strikes.

(Testimony of George R. Harlan.)

3. The Association agrees that it will use all legal and legitimate means to see that contracts between its members and the Employer are strictly adhered to and faithfully kept.

4. There shall be no strike or other suspension of work by Association members during the life of this agreement.

5. It is mutually agreed that any differences that may arise between the parties to this agreement shall be settled by arbitration in the following manner: Each party shall appoint two representatives who may decide the issue by a three-fourths vote, which shall be final and binding on the parties, or failing to do so, shall by a three-fourths vote elect a fifth person to act with them. The decision of the majority of the five members of this board of arbitration shall be final and binding on both parties.

6. Forty hours shall constitute a week's work.

7. The wage scale shall be as follows:

		Monthly earnings	
	Rate per hour	40 hr. week	48 hr. week
Operators .....	85c	\$147.33	\$191.53
Store Room and Platform			
Shift Men .....	75c	\$130.00	\$169.00
*Other .....	67½c	117.00	152.10

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\* If on Company payroll when white ice season ends, a bonus of 7½c per hour for every hour worked during current vegetable shipping season will be paid, making the total pay average 75c per hour.

Delivery of Vegetable Ice

\$.0833 cents per ton on forty hour week.

(Testimony of George R. Harlan.)

Relief man shall be on the higher scale of wages of the two scales involved. Extra help and common labor, without experience, shall be paid 60c per hour on a forty hour week. There shall be no deductions other than directed by State, Federal and City authorities.

8. An employee having a year's record of employment with the Company will be granted two weeks' vacation with pay. No sick leave is granted but each case will be decided on its merits by the Association and the Company.

9. The Association covenants that its membership has ratified this agreement and same has been approved by the officers of the Association.

10. This agreement shall remain in full force and effect up to and including the first day of November, 1943, and continue thereafter from year to year unless one party notifies the other in writing ninety days in advance of the expiration date, of a desire to change the conditions of this agreement.

11. Overtime at the rate of time and one-half of regular pay shall be paid on all hours per day worked in excess of those set forth in paragraph six hereof.

12. It is understood and agreed that in the event mandatory laws or governmental rules or regulations applicable to, or in conflict with any of the provisions of this agreement, shall become effective and binding upon the parties hereto with respect

(Testimony of George R. Harlan.)

to such conflicting provisions, this Agreement shall be subject to modification to the extent required thereby.

13. No employee shall have his or her wages reduced or hours of labor increased by the execution of this agreement.

14. No member of the Association shall be discharged for upholding Association principles, or for doing committee work in the interest of the Association after regular working hours.

15. The Employer agrees to make payroll deductions for monthly dues and fees of the Association members in such amounts as the Association may direct, upon being furnished with membership authorization forms properly signed by the member and the Secretary of the Association, and such collections will be paid over to the Association monthly. Provided, however, that the Employer will be under no obligation to make a payroll deduction for any employee after the Employer has been notified in writing by the Secretary of the Association and the member involved that such employee no longer wishes deductions made. All such deductions so made by the Employer are to be considered as an advance payment of the dues of the Association member for the ensuing monthly period.

16. Any person becoming an employee of Employer shall within fifteen days become and remain a member in good standing of the Association.

17. No existing privileges which have hereto



(Testimony of George R. Harlan.)

been extended to the employees shall be terminated by the signing of this agreement.

18. Employer shall have the right to discharge, without redress, for dishonesty, drunkenness, drinking on duty, or incompetence.

19. The Employer shall supply bulletin board space for the use of the Association in posting officially signed Association bulletins.

In Witness Whereof, the parties hereto have set their hands.

HOLTVILLE ICE AND COLD  
STORAGE COMPANY

By F. A. WILLARD

Its President.

HOLTVILLE ICE AND COLD  
STORAGE COMPANY EM-  
PLOYEES ASSOCIATION

By GEO. R. HARLAN

Its President

By GEO. P. DRINKARD, JR.

Its Vice-President

By M. K. STOUT

Its Secretary-Treasurer.

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Cross Examination

Q. (By Mr. Yeager): Were you acquainted with this meeting [329] the employees had with the A. F. of L. here?      A. No.

Q. Did you attend that meeting?      A. No.

(Testimony of George R. Harlan.)

Q. In September, did you know that some of the boys went down to that meeting?

A. Yes, I knew some of them went down after they went.

Q. Now, prior to the time that you had this conversation with Mr. Osborne at your house, had there been any discussion between you and any of the other employees at the Ice Company regarding an employees union?

A. I think it had been mentioned, but I can't say when and where. [330]

Q. (By Mr. Yeager): Immediately prior to your talk with Mr. Osborne, were you acquainted with the employees unions?

A. Only what I had read in the newspapers.

Q. Had you talked with any of the employees of the Kramer Baking Company or of the Imperial Ice Company concerning it?

A. No, I hadn't; no.

Q. But you had gotten some information from reports in the newspapers? A. Yes.

Q. And this meeting that you say you heard about that took place in El Centro here, the A. F. of L.— A. Yes.

Q. —was that meeting before your conversation with Mr. Osborne or afterward?

A. That was before, I guess.

Q. How long before?

A. I don't know, possibly four or five days, maybe a week.

(Testimony of George R. Harlan.)

Q. After that meeting took place, did you have any conversation with any of the boys who had been to the meeting?           A. Yes.

Q. Whom?

A. I talked to Mr. Fruhn and Mr. Standifer, and I don't know, I talked to several of the boys.

Q. Did you discuss with them these employees unions that [331] you had read about in the papers?

A. I did, I mentioned it to Mr. Fruhn and Mr. Standifer, both, I believe.

Q. And these discussions you had were before or after your conversation with Mr. Osborne?

A. That was after.

Q. That was after?           A. Yes.

Q. Did you have any of those discussions with those men before your conversation with Mr. Osborne?

Mr. Ryan: I object, he has already said he didn't.

Mr. Smith: No, he didn't say that.

Mr. Yaeger: These particular ones we are after, I am asking if he had any others.

Trial Examiner Mouritsen: I will permit him to answer.

The Witness: It had been mentioned around among the boys, some of them there, I couldn't say just who. I don't know that I had had a discussion myself, but I had heard it mentioned around.

Q. (By Mr. Yeager): Before you talked to Mr. Osborne?

(Testimony of George R. Harlan.)

A. Yes, it had been mentioned before I talked to Mr. Osborne; I heard it mentioned. I don't think I had any discussions myself about it.

Q. When Mr. Osborne came to your house, were you acquainted with him? [332]

A. Well, not personally, no.

Q. What did he indicate to you was the reason for his visit?

A. He was representing the Associated Farmers

Q. And what did he want of you, what did he ask to see you about?

A. He wanted some information on the union activity.

Q. Now, I think you testified in reply to Mr. Ryan's question that the question of employees union came up at that conversation, is that right?

A. Yes.

Q. Did that come up in response to questions on your part or did Mr. Osborne volunteer the information about employees unions?

A. I asked him.

Q. What did you ask him?

A. I asked him—I didn't ask him about the employees unions, I asked him what could be done, that I wouldn't have to go in the union, the A. F. of L.

Q. Did you ask him what the men could do that were employed there, or just what you personally could do?



(Testimony of George R. Harlan.)

A. I don't know how I directed the question to him now. I couldn't say that now.

Q. Did you indicate to him that you had read about these employees unions in the papers? [333]

A. After he mentioned them I did.

Q. What did he say about the employees unions?

A. I couldn't tell you exactly the words he said. He just explained the situation, the way they operated their associations.

Q. Did you ask him anything about the mechanics of forming one, how you went about it?

A. I did, yes.

Q. What did he say in response to that?

A. I think that I asked Mr. Osborne if he could get hold of me a copy of some of those, and he said he would try.

Q. Did he encourage you in any fashion to organize an employees union in preference to the A. F. of L.?

A. Not any more than the questions I asked him. [334]

Q. (By Mr. Yeager): Did he discuss with you the attempt of the A. F. of L. to organize the plant or did that come up at all?

A. Well, he asked me some questions about how many of the boys were joining the A. F. of L.

Q. Did he indicate any disapproval concerning that?

Mr. Ryan: I object—

Mr. Petersen: To which we object, it calls for a conclusion.

(Testimony of George R. Harlan.)

Trial Examiner Mouritsen: I prefer you would ask the witness what he said.

Q. (By Mr. Yeager): Did he ask anything about that subject?

A. Well, it was mentioned there, I couldn't say what was said.

Q. All right. And then you say he explained the mechanics of forming an employees union?

A. Yes.

Q. Did he say anything more to you about an employees union, other than the mechanics of forming it? Was there anything further on that subject that he mentioned?

A. Well, I don't know just how you want me to answer that.

Q. Just the truth, whatever it is.

A. What you want? [335]

Q. Do you recall anything—would you like to have the question read to you again?

A. Yes, sir.

(The question was read.)

A. I don't think there was, I don't remember.

Q. What was the next thing you did in regard to this employees union, after talking to Mr. Osborne?

A. Well, Mr. Osborne, I asked Mr. Osborne if he could get me a copy of some of those, and he did later on. Then I talked to some of the men.

Q. Now, as I understand it, you saw Mr. Osborne on the street here and he gave you a copy at that time, is that right?

(Testimony of George R. Harlan.)

A. After he was at my house I met him on the street, and that was in Holtville, and he gave it to me.

Q. Did he ask you how you were getting along with the Association, or anything at that time?

A. Well, I couldn't say what he asked me, we talked awhile, and what the conversation was, I don't know. I wouldn't be surprised if there was some things mentioned.

Q. Then what was your next step in regard to this Association?

A. Well, we went ahead and formed an association.

Q. You had a meeting at your house, did you?

A. Yes, we had a meeting at my house, and the Association [336] wasn't formed at that meeting, though.

Q. What did you discuss in regard to the Association at that meeting?

A. Well, we just got together there and just talked it over, the different things about it, and different points in it.

A. And as I understand it, Mr. Osborne came in to that meeting?

A. Yes, I asked Mr. Osborne to come over and explain it to us more thoroughly, and he was there, oh, I don't know, not very long, but he explained it some.

Q. What did he explain, Mr. Harlan?

(Testimony of George R. Harlan.)

A. The by-laws and constitution, how the associations were operating.

Q. Did he discuss with you at that meeting anything about whether you should join or form an employees union, or not?

A. I don't think he did, no.

Q. Did he discuss with you——

Mr. Ryan: Wait a minute. I object to that as calling for a conclusion. I should have objected to it, and I move to strike it.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Yeager): Was there any discussion at that meeting in regard to whether you should join up with the A. F. of L., or not? [337]

Mr. Ryan: I object, it calls for a conclusion.

Mr. Yeager: I asked if there was any discussion.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: Discussion amongst the men, there was, yes.

Q. (By Mr. Yeager): Did Mr. Osborne bring that up? A. No.

Q. Then the next meeting you had in regard to this Association was at Mr. Stout's house, is that right? A. That is right.

Q. And was Mr. Osborne at that meeting?

A. No.

Q. Then you, as I understand, met with Mr. Willard in regard to a proposal for wages and



(Testimony of George R. Harlan.)

vacations and so on? That was the next thing you did?

A. A proposal was given to Mr. Willard at that meeting, yes.

Q. He submitted counter proposals?

A. Yes, sir.

Q. And then you met as a body with him, did you? A. Yes, sir.

Q. Do you recall what part in the conversation Mr. Osborne played at that meeting?

A. At what meeting was that?

Q. At the meeting with Mr. Willard, at which these proposals [338] and counter proposals were discussed?

A. Mr. Osborne wasn't at—only one time Mr. Osborne was in there when there was a debate between us, and that wasn't—the membership wasn't in there at that time, the total membership.

Q. Who was in there?

A. Tom Herring and myself, and I don't know whether there was anyone else in there or not, there may have been.

Q. The only one of those meetings that you had with Mr. Willard, that Mr. Osborne was present at? A. Yes, sir.

Q. Do you recall what Mr. Osborne said at that meeting, approximately?

A. No, I couldn't recall that. I don't remember it.

Q. Had you acquainted him with your proposal and the counter proposal of Mr. Willard?

(Testimony of George R. Harlan.)

A. Not Mr. Osborne, no.

Q. Was anything decided at that meeting?

A. No.

Mr. Ryan: I object, calls for a conclusion. Move to strike it.

Trial Examiner Mouritsen: It isn't very clear. It doesn't mean very much.

Q. (By Mr. Yeager): Was any agreement reached at that time? [339]

A. When Mr. Osborne was there?

Q. Yes. A. No.

Mr. Ryan: I object to that as calling for a conclusion. Move to strike it.

Trial Examiner Mouritsen: I will deny the motion. I will overrule the objection.

Q. (By Mr. Yeager): Do you recall whether Mr. Osborne took any part in the conversations you had with Mr. Willard at that meeting?

A. He did take some part in it, but I couldn't tell you just what he said. He spoke some words, that is about all I know.

Q. Did he speak on your behalf or Mr. Willard's behalf?

A. Well, I couldn't say to that. [340]

#### Cross Examination

Q. (By Mr. Smith): Mr. Harlan, to your knowledge did Mr. Willard have anything whatever to do with forming the Employees Association?

A. Not to my knowledge.

Mr. Ryan: I object, it calls for a conclusion.

(Testimony of George R. Harlan.)

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): To your knowledge, was there ever a [341] contribution by Mr. Willard or by the Holtville Ice and Cold Storage Company to this Employees Association? A. No, sir.

Q. Or to any member of it for the benefit of the Association?

A. Not that I know anything about.

Mr. Petersen: I am going to object to that, the last phrase, for the benefit of it, since it has been proven that the Holtville Ice and Cold Storage Company is a contributor to the Associated Farmers.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Smith): Mr. Harlan, did you ever hear Mr. Willard express an opinion about any union? A. I never.

Q. Mr. Harlan, did you, yourself, sign an application for the subsidiary of the A. F. of L. at one time? A. I signed an application, yes.

Q. Do you remember when that was?

A. I think that was the next day after the boys came over.

Q. After September 26th? A. Yes.

Q. Did you ever turn in your signed application? A. No, sir.

Q. And you never paid any money in? [342]

A. No, sir.

Q. (By Mr. Smith): Do you have a list of the

(Testimony of George R. Harlan.)

members that became members of your Employees Association prior to November 1, 1941?

A. The secretary has, I guess.

Q. Who was the first secretary?

A. M. K. Stout.

Q. Was there a membership list kept from the beginning?

A. Yes, sir. [343]

### Cross Examination

Q. (By Mr. Petersen): What did you say to Mr. Osborne in the first meeting concerning getting into an A. F. of L. union, what was the substance of your language?

Mr. Whitelaw: Object to it, it has been answered in direct examination and cross examination.

Mr. Petersen: It is a foundation question.

Trial Examiner Muritsen: I will permit it.

The Witness: Well, I asked Mr. Osborne what I could do so I wouldn't have to go with the A. F. of L., what could be done about that. And he explained the association. [345]

Q. (By Mr. Petersen): About what date did you arrive at the fact that this contract, Board's 5, was successfully negotiated?

A. That was in November, 1941.

Q. What part of November?

A. I imagine the first or middle part of November, somewhere along there.

Q. Did you testify that you had meetings or negotiations during the first part of November in your previous testi- [346] mony?



(Testimony of George R. Harlan.)

Mr. Smith: I will object to that, the record shows just what he testified to.

Trial Examiner Moritsen: Well, the witness was there. There was some indefiniteness there that I would like to clear up.

Q. (By Trial Examiner Mouritsen): Let me ask you, do you know who drew up this document, Board's Exhibit 5, that is the first contract executed in the year 1941, do you know who drew it up?

A. The final contract?

Q. Yes.

A. No, I don't. Mr. Willard drew one up that I know, and the Association had one, but just which one made this particular one, I couldn't say.

Q. Did you have a lawyer helping the Association?

A. No.

Q. You had no lawyer that drew up any of your copies?

A. No.

Q. Were any of your copies drawn up on legal-size paper, such as this (indicating)?

A. Yes.

Q. Where did you get the paper?

A. We used copies of—got our copies from some of the other association copies. [347]

Q. Did you have them written up on the typewriter?

A. Yes, they were written on the typewriter.

Q. Who did that for the Association?

A. I don't know. My daughter did some of the typing, whether it was her that typed them up or not, I couldn't say.

(Testimony of George R. Harlan.)

Q. Did she type this one up (indicating)?

A. No.

Q. Did Mr. Willard type this up?

A. I rather think this was one of Mr. Willard's counter proposals and that it was decided on by us.

Q. This is executed as of November 1, 1941. Now, can you tell me whether it was executed on the date that it bears as of the first day of November, 1941?

A. No. When we were negotiating we come to an agreement that the contract would take effect when the final agreement was settled, if any, on the 1st of November.

Q. Do you have any idea how long those negotiations lasted?

A. Well, they lasted long about the middle of November, I imagine, the best I remember.

Q. Over how many days or weeks did they extend?

A. As I remember, I think they were started in the latter part of October, about three weeks, approximately.

Q. Did this agreement result in your receiving an increase in pay?

A. Yes, sir. [348]

Q. I think you said that the contract was to become effective as of the 1st of November, when the negotiations were concluded, is that correct?

A. Yes.

Q. Did you receive any pay back to the 1st of November, 1941, as a result of this contract?

(Testimony of George R. Harlan.)

A. Yes, sir.

Q. Was that given to you in a separate check?

A. I don't remember whether that was given to me in a separate check or all in one check, I couldn't say.

Q. But you are pretty certain that the contract wasn't—you say the negotiations on the contract weren't completed by the 1st of November, 1941?

A. No. [349]

Q. Before this contract went into effect, how much were you receiving per month?

A. Approximately \$117.

Q. And after it went into effect, how much were you receiving a month?

A. Made about \$162, I believe. [350]

\* \* \* \* \*

The Witness: We received an extra week's vacation.

Q. (By Mr. Smith): You mean with pay?

Trial Examiner Mouritsen: The practice had been you received one week's vacation with pay and one without before the contract was signed, is that right?

The Witness: Whatever time you taken off, other than the one week, you didn't get any pay.

Trial Examiner Mouritsen: After that time you received two weeks' vacation with pay?

The Witness: After that time we received two weeks' [355] vacation with pay.

Mr. Smith: All right.

Q. (By Mr. Smith): What else?

A. I can't recall just now of any other thing.

(Testimony of George R. Harlan.)

Q. Was there any provision to get time and a half for overtime before the contract?

A. Oh, no.

Q. You received that also then?

A. We received that.

Q. Time and a half for all over 40 hours a week? A. Yes.

Mr. Petersen: To which we are going to object. At the time this contract was signed the laws of the United States made overtime for all overtime for 40 hours a week.

Trial Examiner Mouritsen: You weren't paid time and a half for overtime in excess of 40 hours a week before you signed the contract?

The Witness: Yes, we were paid time and a half before, but may I answer that in a little different way? Before we worked 40 hours a week and we were supposed to take off the rest of the time. However, sometimes it was necessary that somebody work, they got time and a half. On this contract we worked a regular day each week of time and a half, making it 48 hours a week, but time and a half for the extra 8 hours. Is that clear? [356]

Trial Examiner Mouritsen: I think so.

Did they agree in here you were going to get 48 hours every week?

The Witness: That is the way we were working.

Q. (By Trial Examiner Mouritsen): That is not the question. According to the contract were you guaranteed, say, a 48-hour week that you would



(Testimony of George R. Harlan.)

receive that much work each week, is that the way you understood it?

A. Yes, sir, that is the way I understood it. [357]

Redirect Examination

Q. (By Mr. Ryan): Mr. Harlan, I show you Board's Exhibit 8 [358] in evidence, and direct your attention to paragraph 16, and ask you whether or not the proposals which Mr. Willard submitted to you contained such a provision.

A. I think it did, yes, sir.

Q. The provision is the same, paragraph 16, of each of the exhibits 5 and 8. Was the provision which is in Board's Exhibit 5, which is paragraph 15——

Mr. Whitelaw: Is that the same provision, Mr. Ryan?

Mr. Ryan: Paragraph 15.

Mr. Whitelaw: Same provision as paragraph 16?

Mr. Ryan: No, no, they are not both 16. They are both 15.

Q. (By Mr. Ryan): The two contracts, paragraph 15 in both contracts, are the same, if I have read them correctly. Looking at paragraph 15 in Board's Exhibit 5, was that provision contained in the proposal of Mr. Willard to the association?

A. I think it was, on both the same; I wouldn't say positive.

Mr. Ryan: I have no further questions.

(Testimony of George R. Harlan.)

Recross Examination

Q. (By Mr. Smith): On that same line of questions, Mr. Harlan, as I understand it you first submitted a written contract to Mr. Willard, is that correct?

A. Yes, sir.

Q. And then he caused one to be typed up that contained the [359] same provisions, except as to the scale of wages, which he, in turn, proposed or offered to make, was that not true? In other words, he copied your contract, did he not, except as to the rate of wages?

A. I think——

Mr. Petersen: To which we are going to object, it calls for a conclusion of the witness.

Q. (By Trial Examiner Mouritsen): Tell us, Mr. Witness, I think your testimony so far has been that at the later meeting at Stout's home the matter of vacations, wages, hours was discussed, and that you set those things out in writing. Do you recall that testimony?

A. Yes.

Q. Now, were those the only matters that you presented to him, to Mr. Willard as your first proposal, or did it contain other things?

A. It contained practically the whole thing here of this. Some of it was a little bit different.

Q. Contained the whole what?

A. The whole of the contract.

Q. Were those matters also discussed at Stout's meeting at the meeting at Stout's home?

A. Well, verbally, yes, it was spoken of.

(Testimony of George R. Harlan.)

Q. Were they put down in writing to be presented to Mr. Willard? [360]

A. I don't get just what you mean.

Trial Examiner Mouritsen: Read the question.

(The question was read.)

The Witness: I think that they was, yes.

Q. (By Mr. Smith): Isn't it true that the whole contract was written up and presented to him?

A. Yes, we had a full contract when it was taken in, full proposal; practically the same.

Q. When he said that he presented a contract, it wasn't what he typed up, merely a copy of what you had previously presented to him, except changes made in the scale of wages? A. Yes.

#### Recross Examination

Q. (By Mr. Whitelaw): In other words, he used your form of the contract, did he, Mr. Harlan, that you presented to him? A. I presume, yes.

Q. You had those provisions there to which Mr. Ryan called your attention, the check-off system, paragraph 15, the payment of dues from wages and the union shop, that is, the requiring of members to become a member of your union within 15 days, were in your proposal? A. Yes.

Q. They were in your contract when you presented it to Mr. Willard? [361] A. Yes, sir.

#### Redirect Examination

Q. (By Mr. Ryan): Mr. Harlan, do you still have a copy of those original proposals which were submitted to Mr. Willard by yourself?

(Testimony of George R. Harlan.)

A. I wouldn't say, if we have this copy Mr. Stout has it. I haven't any of the papers myself. As secretary-treasurer he takes care of those. Whether he has it or not, I couldn't say.

Q. Would you check with Mr. Stout and any other representative of the association that might have them and attempt to get them and bring them here? A. I will.

Mr. Ryan: As counsel for the company, Mr. Smith, I ask you if you will make an effort to obtain the original proposals submitted by Mr. Willard to the association and bring them to the hearing.

Mr. Smith: I will find out if they have any such.

Trial Examiner Mouritsen: Anything further of this witness?

Mr. Petersen: Just one more question.

#### Recross Examination

Q. (By Mr. Petersen): Did Mr. Osborne raise any objection at the meeting where you were negotiating with Mr. Willard at which he was present, to the inclusion of paragraphs 15 [362] and 16 in Board's Exhibit 5?

Mr. Whitelaw: To which we object, it has been asked and answered by the witness.

Trial Examiner Mouritsen: I will overrule the objection.

Q. (By Mr. Petersen): Look at 15 and 16 in Board's 5.

A. Was that the meeting that Mr. Osborne was with Mr. Willard when we were negotiating?



(Testimony of George R. Harlan.)

Q. Yes.

Mr. Whitelaw: We object to the form of the question; it assumes facts not in evidence.

Mr. Yeager: He said he was there with Mr. Willard when he came in.

Mr. Whitelaw: No objection then.

Trial Examiner Mouritsen: If there is no objection, answer the question.

The Witness: I can't remember the conversation that we had at that meeting.

Q. (By Mr. Petersen): Was there any objection raised on the part of Mr. Willard or Mr. Osborne toward the inclusion of paragraphs 15 and 16 in this contract?

Mr. Whitelaw: To which we object, it has already been asked and answered.

Trial Examiner Mouritsen: I will overrule the objection.

Mr. Whitelaw: It is compound. There is no showing that [363] paragraphs 15 and 16 were discussed at that meeting.

Trial Examiner Mouritsen: I will overrule the objection. Answer the question.

The Witness: I don't remember that this part of the contract was even brought up.

Q. (By Trial Examiner Mouritsen): That is, in the meeting with Mr. Willard.

A. It was with Mr. Willard.

Q. Did he ever say anything about those two provisions, paragraphs 15 and 16 of Board's Exhibit 5?

(Testimony of George R. Harlan.)

A. The first proposal I taken in to Mr. Willard he objected to—I don't remember about 16—about 15, but the one about 16 he objected to the first time that we went in.

Q. What did he say about 16?

A. He said he didn't like that idea. I don't know, remember the words he used, that was the expression, that he didn't like the idea of making that in there so every man had to belong to the association. And after we talked awhile I went on out. When we brought the other one up he told me that it would be all right.

Q. That was in the counter proposal he gave you back the next time, wasn't it?

A. Yes.

Q. It was in all the proposals you made after that time [364] and the counter proposals he made?

A. Yes.

Q. You don't recall that he said anything about paragraph 15 at any time?

A. I don't recall that.

Q. Has that paragraph or has that provision been observed since the contract was signed?

A. I think that has been in force ever since the contract was signed.

Q. After you submitted the first proposal to Mr. Willard, did you ever meet with Mr. Osborne after that time, other than this one occasion when he was present at the conference between the members of the association and Mr. Willard?

A. I don't remember, don't recall of the meeting.

(Testimony of George R. Harlan.)

Q. Are you a member of the Associated Farmers?  
A. No, sir.

Q. Did you ever obtain from Mr. Osborne or did he ever give you a copy of any contract that any of these independent organizations had with any other companies?

A. We had a copy of a contract—no, I don't think we ever did, either. I don't remember seeing the contract that was with any of the other companies.

Q. I think you have said you never consulted any lawyer or attorney before you drafted the agreement that is Board's Exhibit 5, is that right? [365]

A. I don't believe that I did.

Q. Well, did any of the members of your association, to your knowledge?

A. I think that after the proposal was made out, it was taken to an attorney and we asked if it was O. K.

Q. Who was that?  
A. Mr. Whitelaw.

Q. I am merely asking you that because apparently this is in legal terminology. I believe you said that you wrote it.  
A. We used——

Q. And that the document submitted by Mr. Willard was in the same form as your first proposal, is that right?  
A. I think so.

Q. Was it drafted in this form by Mr. Whitelaw? In other words, this is written as a lawyer would write it, and I take it there aren't any lawyers employed among——

(Testimony of George R. Harlan.)

A. (Interrupting): No, there aren't any lawyers employed among us.

Q. Wasn't this document prepared by Mr. White-law?

A. I don't know who the document was prepared by. I think some of the boys perhaps had a copy of part of one, or one, or something, and who prepared it I couldn't tell you.

Q. Who would be in a better position to tell us who prepared this document, Board's Exhibit 5?

A. I don't know, I don't remember who. [366]

Q. Who took it to the attorney to have him approve it?

A. I was one of them that took it after it was written up, fixed up. The copy we had wasn't all printed out, we wrote it in, part of our stuff.

Q. After you wrote it, part of it, who finally drafted it and wrote it up in this form?

A. Well, the form was already made we had and I don't know who of the boys got the form.

Q. You have no idea?

A. No, I couldn't tell you.

Mr. Petersen: One more question. I am rather puzzled by the designation in Board's Exhibit 5 there, listing the classifications of operator. What is an operator? We haven't that designation so far as a description of the job down there. [367]

Trial Examiner Mouritsen: Isn't that a man who operates the crane, or something that pulls these cranes now?

The Witness: Yes, sir.



(Testimony of George R. Harlan.)

Q. (By Mr. Petersen): What else does the operator do? Does he work on the ice compressor?

A. Tends to them, yes.

Q. Before they discontinued Diesel operation did the can puller take care of the ice compressor then?

A. No.

Q. Who takes care of it then?

A. They had engineers.

Q. Who makes out the log sheet now?

A. The operator.

Q. Did they make out those log sheets before the Diesel engines were discontinued? A. No, sir.

Q. In the automatic floats, the treating of the water, who handles that now?

A. The ice pullers.

Q. Who did that previous to the change-over from Diesel? A. Engineers.

Mr. Petersen: That is all.

#### Recross Examination

Q. (By Mr. Smith): Along that same line, when the change-over was made from Diesel power to electric motors, is it [368] not true that the capacity of the can pullers was increased so that it handled twice as many? A. Yes.

Q. Than they did under the Diesel power?

A. Yes.

Q. Formerly picked up 6 cans and when the change-over was made they picked up 12 cans?

A. Yes.

Q. At one operation?

A. Yes, that is right. [369]

STANLEY HARRISON WELLS

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name, please, Mr. Wells.

A. Stanley Harrison Wells.

Q. And what is your address?

A. 635 Heil Avenue, El Centro.

Q. During the year 1941 what was your occupation, Mr. Wells?

A. Business representative for Local 898, International Brotherhood of Teamsters.

Q. Where were you working at that time?

A. In El Centro vicinity.

Q. During the months of September and October and November [370] of 1941, were you a business agent?

A. Not in September; October and November and forward

Q. Did you have occasion, as business representative of Local 898, to go to the Holtville Ice plant any time during the fall of 1941?

A. Yes.

Q. When did you have occasion to go there?

A. It was in the latter part of October, around the 28, on or before the 28th.

Q. Was that the first time you had ever been there?

(Testimony of Stanley Harrison Wells.)

A. No, I had been there two or three times previously.

Q. When you first went there, what was your business there?

A. I went there in company with Kenneth Lloyd to take a contract, proposal to the Holtville Ice and Cold Storage Company.

Q. Who is Kenneth Lloyd?

A. He was also a business representative of Local 898.

Q. About when was it you went there with him to bring a contract or proposal?

A. I believe it was about the 12th of October.

Q. Did you leave that proposal with anybody on that occasion?

A. Left it with Mr. Willard.

Mr. Ryan: Does the company have that proposal now?

Mr. Smith: I don't know. Herman thinks they have it [371] over there at Holtville.

Trial Examiner Mouritsen: Do you want it, Mr. Ryan?

Mr. Ryan: Yes, I would like to have it.

Mr. Smith: All right.

Q. (By Mr. Ryan): On the occasion that you left the proposed contract with Mr. Willard, did you have a conversation with him?

A. No, I don't believe so, I know I didn't.

Q. Thereafter did you have occasion to go back and talk with Mr. Willard after that?

A. Yes.

(Testimony of Stanley Harrison Wells.)

Q. When was that?

A. That was on October 28.

Q. Was anyone with you on that occasion?

A. Sir?

Q. Was anyone with you on that occasion?

A. Yes, Kenneth Lloyd.

Q. Where did you see Mr. Willard on that occasion?

A. In his offices at the Holtville plant.

Q. Was anyone present besides Mr. Willard representing the company?

A. I believe Mr. Smith was also present; I believe that is his name. [372]

Q. Herman Smith?

A. Mr. Willard's secretary or office manager, or something.

Q. Did you have a conversation on that occasion with Mr. Willard?      A. Yes.

Q. Will you tell us what you said and what Mr. Willard said?

A. Well, Mr. Lloyd did the preliminary talking before I had anything to say. And then we had heard from some of our members at——

Mr. Smith: Just a minute. I object to what you heard from the members.

Trial Examiner Mouritsen: Yes. Tell us what was said.

The Witness: I brought the point out that we wanted to be sure, in the event of the failure of our organizational campaign, that the members that belonged to our organization at that time



(Testimony of Stanley Harrison Wells.)

would go back according to their seniority, go back to work, and I believe that Mr. Willard said the union didn't enter into it; they would go back in that same order.

Q. According to seniority?

A. According to seniority. And also I asked him if we could negotiate, what the reason was we couldn't negotiate on the contract. He said he would have to tell the Board of Directors together. And we said, "Well, when could that be [373] arranged. We have been trying for some time to negotiate the contract." We had a majority in our organization, majority of their personnel, exclusive of the office help. He said, well, he didn't know whether it was important enough to call a Board of Directors meeting for. And we asked him his position in the company. He said he was chairman of the Board of Directors.

Q. (By Mr. Ryan): Did he say anything further?

A. Not that I can recall right at the moment.

Q. Did he say anything about whether or not you represented a majority?

A. Yes, we stated that—Kenneth Lloyd and myself stated that we represented a majority of his personnel on application, belonging to our organization. And he said that is well and good, but he didn't have time at the present, at that time, to do any negotiating until such time as he had called a meeting.

Q. Called a meeting of what?

(Testimony of Stanley Harrison Wells.)

A. His Board of Directors.

Q. Did he indicate when he would do that? [374]

Mr. Ryan: Will the respondent's counsel stipulate that under date of January 8th, 1942—I think it is—the union, Local 898, wrote a letter to Mr. Willard? I believe you admit that in your answer.

Mr. Smith: I think that is correct. We have it on January 12th, the letter was received. I suppose that is the letter of date of January 8th. [377]

Mr. Whitelaw: We know nothing about it, never saw the letter, don't know the contents.

Mr. Ryan: Miss Reporter, will you mark this as Board's exhibit next in order?

(The document referred to was marked for identification as Board's Exhibit 9-A.)

Mr. Ryan: Counsel, I have here a copy, I think, of the letter which was written to Mr. Willard by the union, which I have had marked for identification as Board's Exhibit 9-A.

Mr. Smith: It should be January 8th, 1942.

Mr. Ryan: Just an error in typing, I guess.

(The document referred to was marked for identification as Board's Exhibit 9-B.)

Mr. Ryan: I also have here what purports to be Mr. Willard's answer to the letter. I have had it marked as Board's Exhibit 9-B.

Mr. Smith: I will stipulate those are correct copies of the letter of Mr. Willard, the letter Mr. Willard received, and his reply, except the date on

(Testimony of Stanley Harrison Wells.)

your letter to the ice company should be dated January 8th, 1942, instead of 1941.

Mr. Ryan: Is it permissible for me to change it in ink to 1942?

Mr. Smith: Surely.

Mr. Ryan: I offer in evidence then what has been marked [378] and agreed to as Board's Exhibit 9-A, which is a letter addressed to the Holtville Ice and Cold Storage Company under date of January 8th, 1942, by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers Local 898, by the secretary-treasurer, and a copy of the letter which was—Mr. Willard's reply to the union. That is under date of January 23, 1942, from the Holtville Ice and Cold Storage Company, by Mr. Willard. I offer them in evidence.

Trial Examiner Mouritsen: Do I understand that it is stipulated these are true and correct copies of the originals?

Mr. Smith: Yes.

Mr. Whitelaw: We can't stipulate. We have no objection to the introduction.

Trial Examiner Mouritsen: It is stipulated that this one, Board's Exhibit 9-A, is to the company, was received by the company on or about January 12, 1942?

Mr. Smith: That is correct. [379]

Mr. Smith: The letter of January 12th, 1942, was received by the ice company probably not on the 12th, but within [380] a few days thereafter.

(Testimony of Stanley Harrison Wells.)

It was sent registered and held in the postoffice a few days.

Mr. Ryan: Board's Exhibit 9-B is a copy of the company's answer, which was sent to the local.

Mr. Smith: That is right.

Trial Examiner Mouritsen: I will receive them in evidence as Board's Exhibits 9-A and 9-B.

(The documents heretofore marked for identification as Board's Exhibits 9-A and 9-B were received in evidence.)

### BOARD'S EXHIBIT No. 9-A

Chauffeurs, Teamsters and Helpers, Local Union  
No. 898

Imperial County California and  
Yuma County Arizona

[Cut]

Ray E. Magness

Secretary-Treasurer

[Union Label]4

Office:

795 Main Street

El Centro, Calif.

Phone 96

Affiliated with the I. B. of T. C. W. & H. of A.,  
A. F. of L.

January 12, 1942

Holtville Ice and Storage Co.,

Holtville, California

Attention Mr. Willard

Gentlemen:

In October, 1941, we presented a contract to you and requested that you bargain. Repeated efforts have been made to get you to meet with us, without avail.



(Testimony of Stanley Harrison Wells.)

Please be advised that we are demanding that you meet with us, and request that you notify us the date which will be convenient for you to meet with us.

Very truly yours,

INTERNATIONAL BROTHER-  
HOOD OF TEAMSTERS,  
CHAUFFEURS, WARE-  
HOUSEMEN, AND HELP-  
ERS, LOCAL 898

By RAY E. MAGNESS

Secretary-Treasurer

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BOARD'S EXHIBIT No. 9-B

Copy

January 23, 1942

Mr. Ray E. Magness  
795 Main Street  
El Centro, California

Dear Sir:

Your letter of the 12th just reached me yesterday.

For your information all of our employees belong to a local union which we recognize as the bargaining agents and have made an agreement with them to that effect.

Yours truly,

HOLTVILLE ICE & COLD  
STORAGE CO.

By .....  
F. A. Waillard

(Testimony of Stanley Harrison Wells.)

Mr. Ryan: I have no further questions. [381]

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HENRY G. MILLER,

called as a witness by and on behalf of the Board,  
having been first duly sworn, was examined and  
testified as follows:

Direct Examination

Q. (By Mr. Ryan): Will you state your full name, Mr. Miller? A. Henry G. Miller.

Q. Where do you live? A. Burbank.

Q. California? A. Yes.

Q. Mr. Miller, did you ever live in El Centro County—or Imperial County? A. I did.

Q. When did you live in Imperial County?

A. From 1908 until some time in '40, 1940.

Q. Were you ever employed by Holtville Ice and Cold Storage Company? A. I was.

Q. And how long were you employed by that company?

A. Oh, I think it was some 14 years.

Q. In what capacity?

A. As ice puller and engineer.

Q. Were you employed by that company in September of 1941? A. September, 1941, yes.

[400]

Q. And October, 1941? A. Yes.

Q. Did you have occasion to join any labor organization while you were employed by the company?

(Testimony of Henry G. Miller.)

Mr. Whitelaw: Objected to, calling for an opinion and conclusion of this witness; the record is the best evidence.

Mr. Ryan: I will ask him if he made application to join any labor organization.

The Witness: I did.

Q. (By Mr. Ryan): What organization did you make application to join?

A. The A. F. of L.

Q. What branch of the A. F. of L.?

A. Teamsters, I believe.

Q. When did you make such application?

A. First part of October, I wouldn't know the date.

Q. 1941? A. Yes.

Q. Where were you when you made the application? A. At El Centro.

Q. Where in El Centro?

A. At the Union Temple.

Q. A. F. of L. Labor Temple?

A. A. F. of L. Union Temple.

Q. Do you know Keith Metz? [401]

A. I do.

Q. After you had been at the Labor Temple and made application for membership in the Teamsters and A. F. of L., did you have occasion to see him?

A. Yes, I saw him, he looked me up.

Q. When did you do that?

A. It was either one or two days after I made application at the Union Hall.

(Testimony of Henry G. Miller.)

Q. Where did Mr. Metz look you up?

A. At El Centro.

Q. Where were you in El Centro at the time?

A. At the Chevrolet Garage.

Q. Did you have a conversation with him there?

A. Yes.

Q. Went in the garage when you got there, or just how did it come about that you met at the garage?

A. Oh, I was in the garage and he came in there and was looking for me.

Q. Was anyone present when you and he had the conversation there?

A. We didn't converse in the garage, he wanted to speak to me and we stepped outside and carried on our conversation in his car. [402]

Mr. Ryan: Is it stipulated that Keith Metz was a director of the Associated Farmers of Imperial County in October, 1941?

Mr. Smith: So stipulated.

Trial Examiner Mouritsen: Mr. Whitelaw?

Mr. Whitelaw: Yes.

Trial Examiner Mouritsen: Very well. [406]

Q. (By Mr. Ryan): Will you go ahead and relate the conversation, telling what you said and what he said, if anything? [407]

A. He wanted to speak to me, as I said, and we went to his car and sat down, and he began to tell me he had heard I tried to join the union. He advised me not to join the union.

Q. Tell what he said.



(Testimony of Henry G. Miller.)

A. He said that as a landowner in Imperial County it wouldn't pay me to join the union, it would impair my credit, and that Mr. Williard was glad to have us boys form a union at the ice plant, and if they could be of any assistance to us, they would be glad to help us.

Q. Who would be glad to help you?

A. Referring to the Associated Farmers.

Mr. Whitelaw: Now, the form of the answer is not responsive; it is a conclusion of this witness, not the conversation related.

Trial Examiner Mouritsen: Now, Mr. Witness, what did he say about who would be willing to help you? Did he make that any more definite than you have so far indicated?

The Witness: Well, he—yes, he said the Associated Farmers and he also wanted to take me to see Mr. Hugh Osborne and have a talk with him, and they would do all they could to help us organize the union of our own.

Trial Examiner Mouritsen: You say he wanted to take you, did he say he would take you to Mr. Osborne?

The Witness: He offered to take me, and I didn't want [408] to go.

Q. (By Mr. Ryan): About when did this conversation take place? You said early in October. About what part of October?

A. I can't tell you the exact date, it was right about the 10th, just as near as I can tell. Might

(Testimony of Henry G. Miller.)

have been the 9th or the 11th; it was about that time.

Mr. Whitelaw: Just a minute. For the purpose of the record, we wish to move to strike all the testimony of this witness out regarding the conversation, on the ground it is incompetent, irrelevant and immaterial, no proper foundation having been made, no showing Keith Metz was authorized on behalf of anybody except Keith Metz to speak to Mr. Miller.

Trial Examiner Mouritsen: I will deny the motion. No authority to speak for Mr. Willard.

Mr. Whitelaw: I said of the Associated Farmers.

Mr. Smith: I will make the same request, that the evidence be stricken on behalf of the respondent Ice Company, on the ground that Mr. Metz never had contact with Mr. Willard, or had any authority to speak for Mr. Willard.

Trial Examiner Mouritsen: I will deny the motion.

Q. (By Mr. Ryan): Were you an employee of the Holtville Ice and Storage Company at the time of this conversation? A. Yes. [409]

Q. How long did you continue as an employee of the company after this conversation?

A. At the time this conversation took place, I was on my vacation, and I left for Burbank either the day after, or two days after this conversation took place and got a job at the Lockheed Company and went to work there, and never came back.

(Testimony of Henry G. Miller.)

Q. How long was your vacation for?

A. Two weeks. [410]

Redirect Examination

Q. (By Mr. Ryan): Mr. Miller, at the time you went up to the Labor Temple, as you have just told us, to make application for membership in the Teamsters of the A. F. of L., did you sign anything?

A. Signed an application blank there. [412]

Q. There has been some testimony in the record so far, Mr. Miller, that this occurred on or about the 26th of September, 1941. Would you disagree with that date?

A. Well, it could be possible.

Q. You can't say definitely?

A. I can't state definitely, I could probably look back, trace through some records that happened at the same time, but I couldn't trace this date other than by just guessing at it.

Trial Examiner Mouritsen: Those are all the questions I have.

Q. (By Mr. Smith): Mr. Miller, was the ice plant in operation, making any ice, at that time?

A. No.

Q. How long had the plant been closed down when you left on your vacation?

A. Oh, the best I can recall, about four months. [416]

Q. Is it true, Mr. Miller, that each summer the plant shut down after the carrot season? Is that true?

(Testimony of Henry G. Miller.)

A. Yes, after the clear ice season, we would always make a little clear ice; this particular season we didn't. [417]

Q. There were times, however, that you were laid off, were there not?

A. Yes, I was laid off, oh, I don't remember how many times, for a short period, but usually I worked on some repair job during——

Q. Do you know what date it was that a representative of the Ice Company came to your home in Holtville and talked to your wife and tried to get you to come back?

Mr. Peterson: We object, it has already been asked and answered.

Trial Examiner Mouritsen: He is trying to fix the date. I will permit it.

Mr. Smith: I am asking the date.

The Witness: It must have been some time the latter part of October, I went to work for Lockheed the 20th of October, and it happened—they requested me to go back to work after I went to work up there, so it happened some time after the 20th.

Q. I see. Your wife sent that word to you, did she?

A. Yes. [418]



## PERRY THOMAS BLANKENSHIP,

called as a witness by and on behalf of the Board, having been first duly sworn, was examined and testified as follows:

## Direct Examination

Q. (By Mr. Ryan): State your full name, please, Mr. Blankenship.

A. Perry Thomas Blankenship.

Q. What is your address?

A. It is 1203 Airport Avenue, Downey, California.

Q. Did you ever live in Holtville, California?

A. I did.

Q. When did you live in Holtville?

A. Well, I moved there in May in 1940, and continued until—well, my wife and children stayed there until after school was out in June in '42.

Q. Were you ever employed by Holtville Ice and Cold Storage Company? A. I was.

Q. When were you first employed by that company?

A. Went to work in May, May 4th, 1940.

Q. And in what capacity?

A. I went to work in the storeroom at that time.

Q. What were your duties in the storeroom, briefly?

A. I was dragging ice or putting ice out on the chain for the front platform, and loading the cars out for El Centro. [423]

Q. Are cars the same as trucks?

A. No, it was railroad cars.

(Testimony of Perry Thomas Blankenship.)

Q. I see. Are there railroad cars that go by this ice plant?      A. Yes, sir.

Q. Holtville ice plant?      A. Yes, sir.

Q. Where is the ice taken in the railroad cars?

A. Off the back side of it, out of the storeroom, off a chain runway, chain goes down on a switch.

Q. And then what happened to the car after you put the ice in it?

A. Well, close it up and ship it, I don't know where—to El Centro, I don't know where it went to.

Q. How long did you remain in the storeroom, approximately, if you can't remember exactly?

A. Well, I was in and out of the storeroom the balance of the season. I went in as help maintenance in the engine room part of the time during that time.

Q. Over what period of time did that extend, when you were in the storeroom part of the time and helping maintain the engines part of the time?

A. How long did——

Q. How long did that continue?

A. Well, let's see, I think that extended up into July of [424] that year.

Q. 1940?      A. Yes.

Q. Then what did you do, Mr. Blankenship?

A. I was laid off through the summer.

Q. Then did you return to the employ of the company?      A. I did.

Q. How did you get back to work, what arrangements were made for you to get back to work, if any?

(Testimony of Perry Thomas Blankenship.)

A. I went down there and I was told I would go back to work that fall.

Q. Who told you that?

A. Pete Pool, the superintendent.

Q. When did he tell you that, Mr. Blankenship?

A. That was—that is the time I was laid off in the spring before.

Q. In July?           A. In July.

Q. Did he tell you approximately when they would be needing you again?

A. Well, no, he didn't set any certain date, he just said when they started up.

Q. When did you actually begin working there in the fall again, following the July layoff?

A. That was on the 15th of September, I believe it was. [425]

Q. What job did you start doing at that time?

A. Pulling ice.

Q. How long did you continue as an ice puller?

A. Well, I pulled ice for a couple of months, continued pulling ice.

Q. Then what did you do?

A. And I went from that then, as an operator or helper, relief operator, an ice puller, relief for both ends of it.

Q. Relief engine operator?

A. Relief engine operator and relief ice puller.

Q. Who were the other ice pullers that year while you were there?

A. There was Mr. Miller and Herman Pool, Merl Stout.

(Testimony of Perry Thomas Blankenship.)

Q. Those are engine operators?

A. You mean——

Trial Examiner Mouritsen: I think he said ice pullers.

The Witness: Ice puller?

Trial Examiner Mouritsen: Yes.

The Witness: Oh. Slim Gettle, I don't know his first name. And I know the name, but I can't think of it.

Q. Well, after you began to be a relief ice puller and a relief engine operator, how long did you continue in that capacity?

A. Well, until they closed down.

Q. How long was that? [426]

A. That was in July, I think, along the 11th of July or the 14th, I don't remember just which.

Q. Of 1941? A. 1941, yes, sir.

Q. Then what did you do?

A. I worked there then for a while as just general help, around the plant.

Q. Doing what?

A. Well, taking the—tearing out the old motors, the Diesel motors, and worked in the storeroom, putting up—repair work in there.

Q. That was when they were taking out the Diesel motors and putting in electrical equipment?

A. That is right.

Q. How long did that keep you busy, working around like that?

A. Let's see, I left there—I think that lasted about three weeks. I don't remember the date.



(Testimony of Perry Thomas Blankenship.)

Q. Then what did you do?

A. I didn't do anything at the present time, for about a couple of months, I didn't do anything.

Q. When your work around there, helping tear out the motors and working around in the storeroom ended, did anyone tell you what to do from then on?

A. No. [427]

Q. What did you do, just stop and start staying home, or what was said to you about it?

A. I looked for work around all the time that I was down——

Q. I mean, did you talk to your boss or your superintendent or any representative of the company, when you had the work all finished up?

A. Yes, I asked them what—was there any chance of me getting back on, so I got no reply to it, it wasn't answered at that time.

Q. I am still talking about this time after your season's work had just about been completed, and you say you continued to work around, helping tear out the Diesel motors and work around in the storeroom. I wanted to know what happened when you got through with this extra work. Did somebody tell you, "That is all the work there is for you now for awhile." Or what happened?

A. They came through and laid me off, they told me they didn't need me any longer at the present time.

Q. Who told you that?

A. Pete, Mr. Pool, the superintendent.

(Testimony of Perry Thomas Blankenship.)

Q. Did he say anything else?

A. Not at that time.

Q. And that would be about three weeks after the regular plant operations were closed down in the summer?

A. That is right. [428]

Q. Then what did you do?

A. Well, I hired to the man that had the contract to finish up the work on the storeroom—not store-room, but the outside of the buildings.

Trial Examiner Mouritsen: Who is that? Was that York?

The Witness: York—no, that wasn't his name.

Mr. Smith: Manchester, maybe?

The Witness: Manchester. I worked for him then around for a while and when that was ended, I didn't do nothing.

Q. (By Mr. Ryan): And did you have occasion to join a labor organization in the fall of 1941, or make application for membership in one?

Mr. Whitelaw: Just a minute. You have got a compound question there, Mr. Ryan.

Trial Examiner Mouritsen: That is right.

Mr. Ryan: I will withdraw it.

Q. (By Mr. Ryan): Did you have occasion to make application for membership in any labor organization in the fall of 1941?

A. I did.

Q. When did that happen, when did you do that?

Mr. Whitelaw: Mr. Examiner, aren't the records here pretty clear already as to Mr. Blankenship?

(Testimony of Perry Thomas Blankenship.)

Trial Examiner Mouritsen: My recollection is that it was [429] on the 26th of September, and as I recall there was some reference to this man in the records that were read yesterday as to the payment; it is unnecessary to go into that. If I am incorrect——

Mr. Ryan: I think you are right.

Mr. Whitelaw: He is the top man on this list. It is useless to encumber the record.

Trial Examiner Mouritsen: Well, this would indicate the payment in dues, I would like to know if he made application at the time these other men did in September.

Q. (By Mr. Ryan): When did you make application for membership?

A. Well, it was the same time as the rest of them did, I don't remember what date it was.

Q. Where were you when you made application for membership?

A. At the Union Hall, Temple.

Q. Who was with you?

A. Well, there was Mr. Herman Pool and Mr. Miller, Merl Stout, Henry Fredenburg and Tom Herring, Art Standifer, Lester Hart.

Q. You all went down together, didn't you?

A. Yes, sir, that is right.

Trial Examiner Mouritsen: I think the evidence so far shows that was on or about September 26, 1941.

Would you disagree with that date? [430]

(Testimony of Perry Thomas Blankenship.)

The Witness: No, sir, I wouldn't.

Q. (By Mr. Ryan): Then after you had made application for membership in this union,—what union was it?

A. A. F. of L., Teamsters A. F. of L.

Q. Did you thereafter, after this making of application for membership, did you have a conversation with Pete Pool at any time?

A. Yes, several times.

Q. How soon thereafter did you have your first conversation with him?

A. Well, I think it was about a couple of days.

Q. Where were you at the time?

A. At the plant.

Q. And how did you happen to be at the plant?

A. Well, I was working again for a few days for Mr. Manchester at the time.

Q. Doing some construction work around there?

A. That is right.

Q. Well, what were you doing at the time you had this conversation with Pete, just where were you, at the plant?

A. The first time I was in back of the plant. I was pulling some nails out of some lumber at that time.

Q. Was anyone else present when you and Mr. Pete Pool had your talk on that occasion?

A. No, sir. [431]

Q. Will you tell us what Mr. Pool said and what you said.



(Testimony of Perry Thomas Blankenship.)

Trial Examiner Mouritsen: Do you have the time fixed, approximately?

Mr. Ryan: I understood him to say a few days. Maybe I am wrong.

The Witness: Two or three days.

Mr. Smith: I believe I am going to object to this. The witness said he stopped his work for the Ice Company some time in July or early August, and he had not worked for them for some time. He had gone to work for Manchester in the meantime.

The Witness: That was for Mr. Manchester I was working at the last time.

Mr. Smith: That is right. There is no showing that he was an employee of the Ice Company at the time.

Trial Examiner Mouritsen: I will overrule the objection. I am interested in whether he applied for reinstatement, as the allegation is that he never did.

Tell us what you said and what Pool said.

Q. (By Mr. Ryan): Go ahead and tell us what was said.

A. I don't know all of it, first he walked up to me and asked me, he said, "Well, I heard you have joined the union, you signed up with the union." I said, "Yes, I guess that is true." And he said then that the union didn't have a chance because the men of the class that done all the hiring [432] had a jump ahead of the unions, the labor organization class of people at all times had a jump ahead of them, didn't

(Testimony of Perry Thomas Blankenship.)

think they would ever make a success out of it. From there on I couldn't tell you exactly what was said.

Q. Is there any more you can state about that conversation? Is that all?

A. No, sir, not at that time.

Q. Did you thereafter have any talk with Mr. Pool or any representative of the company about getting, starting back to work?

Mr. Whitelaw: Now, we are going to object to the leading question, Mr. Ryan, it is absolutely leading.

Trial Examiner Mouritsen: Yes. You can ask him if he ever reapplied or applied.

Mr. Ryan: I don't think that is necessary, to ask if he reapplied, I think it is pretty well established by this time he was still an employee of the company. He might have been off temporarily because of slack work.

Mr. Smith: I can't agree with counsel's theory on that.

Trial Examiner Mouritsen: Let's not argue about it. Let's find out if this man ever spoke to anybody about resuming work there or starting work there again.

Q. (By Mr. Ryan): Did you thereafter have any further conversation with Pete Pool? [433]

A. I was off and on down there several times, but the conversation, biggest part of the time, or none of the time, wasn't in any way connected with that.

Q. With what?

(Testimony of Perry Thomas Blankenship.)

A. The union or the ice plant at the time, but later on, just before they started up, I asked him——

Q. When was that?

A. I don't remember just what time that was.

Q. About when was it, can you fix it, approximately?

A. They was figuring on starting on the 15th of October, I believe it was, or September, and I asked for a job, asked if I could get back on. Well, he never did answer me.

Q. Who did not answer you?

A. Mr. Pool.

Q. Where were you on that occasion?

A. I was standing in by the large compressor in the compressor and engine room.

Q. At the Holtville ice plant? A. Yes.

Q. Was anyone present, other than you and Mr. Pete Pool?

A. Well, the men that was working on the compressor from the Los Angeles company up there, I forget his name.

Q. Was that the first time, preceding the starting up, that you asked him, or had you had other conversations?

A. Well, no, not in regardance of working there. [434]

Q. Did you thereafter have any further conversation with Pete Pool or any representative of the company? A. No.

Trial Examiner Mouritsen: Well, do I under-

(Testimony of Perry Thomas Blankenship.)

stand your testimony to be that you asked Pete Pool about going back to work on this one occasion?

The Witness: Yes.

Trial Examiner Mouritsen: Then you can't fix the time very definitely and he didn't say anything to you, he didn't answer you?

The Witness: No.

Q. (By Trial Examiner Mouritsen): What did he do, just walk off?

A. No, he turned the conversation over to this man that was working on the compressor, as if he didn't hear me.

Q. Did you then repeat your request or say anything more about it?

A. Yes, I asked the second time. I decided there was no use, and I didn't ask any more.

Q. Was that the first time that you had asked him to get back to work? A. Yes.

Q. Can you fix this time when you asked Pete Pool for a job and he didn't answer you? Was that before or after you had signed this application blank in the union? [435]

A. That was after.

Q. About how long after?

A. Well, I don't know

Q. I think you said something about the beginning of a season. What did you see at the plant that made you think that that was the beginning of a season?

A. The beginning of the season of starting of making ice, starting the machinery to making ice,



(Testimony of Perry Thomas Blankenship.)

that is what they usually called the beginning of a season.

Q. Had they done that before the time you asked Pete Pool for a job?

A. Which do you mean——

Q. When you last asked him and he didn't give you any answer.

A. I don't know just how you——

Q. What I am trying to find out as nearly as I can, is what time this conversation with Pete Pool took place. Let's try it this way: I think you said this other man from some Los Angeles company was still fixing the compressor there.

A. That is right.

Q. Let me ask you if they were still working on the compressor, this Los Angeles company, when they started the season?

A. No, they had to fix that before they started the season, [436] before they started making ice. And I asked him when they started could I be put back on.

Q. Well,—— A. I——

Q. Pardon me. Did you have something further?

Mr. Whitelaw: You might find out if he was still working for the Manchester people at that time.

The Witness: I wasn't working for anyone at that time.

Q. (By Trial Examiner Mouritsen): It just happened this Manchester man and Pete Pool were

(Testimony of Perry Thomas Blankenship.)

together when you were talking to Pool, is that right?

A. I wouldn't say he was a Manchester man. He was a York Ice Company man. I walked up on one side and was standing there where this man was working, and Pete Pool walked up on the other side, or Mr. Pool, I call him Pete.

Q. Do I understand your testimony to be that they had not started to manufacture ice at that time?

A. That is right.

Q. Well, do you know how long it took place before they actually did start to manufacture ice?

A. No, I don't, but it was some days after they had first set a day to start and then they didn't get started then. They didn't get started the first date they had set, and it was something like ten days later before they did get started. [437]

Q. When you asked Pete Pool, on this occasion, did you expect to go to work right then or were you merely asking him about the future?

A. I was asking about the future, when they started their production of making ice there. [438]

#### Cross Examination

Q. (By Mr. Smith): Mr. Blankenship, you went to work in May, 1940, and you worked through then until July, '40, the first time?

A. That is right.

Q. And as I understand your testimony, when you were laid off at the time the plant shut down in July, '40, you were told about the time you were laid off, that you could come back in the fall?

(Testimony of Perry Thomas Blankenship.)

A. If I was there, yes.

Q. If you were there when they started up?

A. Yes.

Q. And then in the fall, I suppose, you went back and applied for reinstatement?

A. That is right.

Q. And you were put on. During the year you acted as an engine operator part of the time, did you?

A. Engine operator and relief ice puller, both. [439]

Q. (By Mr. Smith): Well, did Pete ever tell you that [444] doing away with the Diesel engines, he didn't know whether there would be work for you the next fall?

A. He didn't say exactly that, he said he would cut out some of the operators.

Q. He said he would have to cut out some of the operators?

A. He said they would cut out some of the operators and make the man that operated the ammonia pumps, would pull the ice. [445]

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HERMAN FRUHN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ryan:

Q. State your full name, please.

(Testimony of Herman Fruhn.)

A. Herman Fruhn.

Q. F-r-u-h-n? A. Yes.

Q. Where do you live, Mr. Fruhn?

A. Holtville.

Q. Were you ever employed at the Holtville Ice & Cold Storage Company? A. Yes.

Q. When were you first employed by that company and how long did you continue to work for them? A. In 1929, in July.

Q. And how long did you continue to work for the company?

A. You mean how long I worked for them? [452]

Q. Yes. A. I have worked until 1940.

Q. 1940? A. Yes.

Q. Might it have been 1941?

A. '41, I mean; '41.

Q. What was your job when you began to work for the company in 1929, or about that time?

A. Ice puller.

Q. How long did you continue to be an ice puller for the company?

A. Always, I pulled ice always.

Q. That was what you were doing up to the time your employment terminated? A. Yes.

Q. While you were employed by the Holtville Ice & Cold Storage Company, did you have occasion to make application for membership with any labor organization?

A. No, only this time that we was going in the union.



(Testimony of Herman Fruhn.)

Q. When was that?

A. That was in September. '41, in September.

Q. September of 1941? A. Yes.

Q. And on that occasion where did you go, to the union? A. Local union. [453]

Q. Where, here in El Centro?

A. In El Centro, yes.

Q. Is that the A. F. of L. Labor Temple?

A. A. F. of L. Labor Temple.

Q. Did you go with other employees or by yourself?

A. No, we was going all together, 11 of us.

Q. Was that about the 26th of September, 1941?

A. Yes.

Q. Did you sign any paper or document when you made application for membership in the union on that occasion? A. Yes, I paid a dollar.

Q. When did your work terminate in 1941? When did it end?

A. When they send me on a vacation?

Q. Yes. A. That was in July.

Q. You went on your vacation in July?

A. Yes.

Trial Examiner Mouritsen: I think maybe we can shorten this.

Do you disagree with the date set out in the answer, namely, July 31, 1941?

Mr. Ryan: Is that the end of the vacation or the beginning of it?

Mr. Smith: I couldn't tell you. Just a minute.

(Testimony of Herman Fruhn.)

He was on vacation from the middle of July to the last of July, ac- [454] cording to my records.

The Witness: I know it was in July.

Q. (By Mr. Ryan): When you went on your vacation did you have a conversation with anybody as to what you were going to do at the end of your vacation, when your vacation was over?

A. No, because every year I know when we get back from the vacation——

Mr. Whitelaw: We are going to object to any voluntary statement. The answer is No.

Trial Examiner Mouritsen: I will sustain the objection.

Q. (By Mr. Ryan): On previous years would you take vacations in the summer or some time in the year while working for the company?

A. I don't understand.

Q. In the years before that, while you were working for the company, did you take a vacation every year?      A. Yes, sir.

Q. How was that worked, can you tell us how you went about that?

A. They give us two weeks vacation; one week paid. And come back from your vacation sometimes they put you to work and sometimes they lay us off another two or three months.

Q. And then how would you——

A. Then they let us know, we go to the ice plant and find [455] out when we go to work.

Q. How would they let you know?

A. Mr. Pool come after us.

(Testimony of Herman Fruhn.)

Q. Pete Pool? A. Yes; or send somebody.

Q. Now, in 1941, you went on your vacation in the middle of July, is that right? A. Yes.

Q. And it ended in the latter part of July?

A. Yes.

Q. What did they do at the end of your vacation? Did you go down to the plant?

A. Yes.

Q. Did you see anybody down there?

A. Yes.

Q. Whom did you see?

A. I saw Mr. Pool.

Q. Pete Pool? A. Yes.

Q. Did you have a conversation with him?

A. I asked him, he said, "Not yet."

Q. What did you ask him?

Mr. Smith: Let's fix a date.

The Witness: "When we going to start?"

Q. (By Mr. Ryan): When was that about that you went down [456] and saw Pete Pool?

A. That was after the vacation, right away.

Q. Right away after the vacation ended?

A. Yes.

Q. All right. Where did you talk to Mr. Pete Pool on that occasion?

A. I talked to him in the plant.

Q. Was anybody else with you there or with Mr. Pete Pool at the time?

A. I cannot remember was there any boys around, when I asked him or not.

(Testimony of Herman Fruhn.)

Q. What did you say to Mr. Pool and what did Mr. Pete Pool say to you, if anything?

A. He come out—"Come later, next week, try next week," he said.

Q. He told you to come back and try next week?

A. Yes, having us come back a few times.

Q. Did you go back the next week?

A. Yes.

Q. Did you see Mr. Pool again?

A. I saw Mr. Willard on the plant.

Q. You saw Mr. Willard, Mr. F. A. Willard (indicating)?

A. Yes, Mr. Willard in the tank. I asked him, and the first time I asked him, he said, "Not yet."

Q. What did you ask him? [457]

A. When he put me to work.

Q. Was that all he said? A. Yes.

Q. And then did you go back again?

A. Then after they started up I met him again in the tank, the same place.

Q. After the plant started to operate?

A. Yes.

Q. How long afterward was it that you went to see Mr. Willard again?

A. Just started the day before.

Q. You saw Mr. Willard in the tank room on that occasion? A. Yes.

Q. Was anybody else present? A. No.

Q. What was said by you and Mr. Willard on that occasion, if anything?



(Testimony of Herman Fruhn.)

A. I asked him if he would put me to work. He said, "Not yet." That I would have to wait awhile.

Q. Is that all that was said on that occasion?

A. Yes, sir.

Q. Then did you go back again, Mr. Fruhn, to the plant? A. Yes, sir.

Q. How soon thereafter did you go back again?

A. About three weeks. [458]

Q. About three weeks later? A. Yes.

Q. Did you see any representative of the company on that occasion?

A. Yes, I was in the office and talked to Mr. Smith.

Q. Mr. Herman Smith?

A. Herman Smith, yes.

Q. And was anybody present when you talked to him?

A. Yes. I asked him about the job——

Q. Was anyone present besides Mr. Smith?

A. No.

Q. Tell us what you said and what he said, if anything.

A. Yes. I asked him about the job and he said he can't give me the ice puller's job back, but they would let me go in the store. I said, "I don't know if I make that in the storeroom, because I never worked in the storeroom before and stored ice." And so I tried it until 12:00, made it three hours, it was a too hard job for me, and I quit.

Q. Did you go to work in the storeroom right

(Testimony of Herman Fruhn.)

away after Mr. Smith offered you the job in the storeroom?      A. Yes.

Q. You worked there in the morning?

A. I worked the forenoon until 12:00 in the night, I only worked three hours and couldn't make it. I got my boy—I have a 19 year old boy—and he helped me. [459]

Q. That night?      A. Yes.

Q. Then what did you do, Mr. Fruhn, after that? You didn't continue in the storeroom?

A. It was not my job and I couldn't make it.

Q. Did you talk to anybody of the company then?

A. Yes, I told Mr. Smith, "It is too hard for me, it is not my job." And I never did the job.

Q. When did you talk to Mr. Smith about that, telling him it was too hard?

A. What do you mean?

Q. When did you talk to Mr. Smith on that occasion and tell him it was too hard in the store room for you?

A. When I came after my check, whatever is coming out of my check.

Q. When did you go after your check?

A. A few days after that.

Q. Did Mr. Smith say anything to you on that occasion?      A. No, he said nothing.

Q. Did you see anyone there after that, either Mr. Pete Pool, Mr. Willard or Mr. Smith?

A. I saw Mr. Pool.

Q. When did you see him after that?

(Testimony of Herman Fruhn.)

A. The same day I saw him.

Q. The same day you came after your check?

[460]

A. Yes.

Q. Did you have a conversation with Mr. Pool?

A. They said, "You couldn't take it."

Q. Did he say anything else? A. No.

Q. Did you ask him anything?

A. Yes, I told him that was not my job and I would like to have my job back.

Q. Did he say anything to that?

A. No, he said nothing. [461]

#### Cross Examination

Q. (By Mr. Smith): Mr. Fruhn, you testified that you talked to Mr. Willard in the tank room. You only talked to him one time, did you not, about coming back to work? A. Two times.

Q. And can you give me the date of the first time?

A. I don't know the date, the same day we start, it was a week ahead—before they start at the plant.

Q. Was it before they started pulling ice, or afterward?

A. Before they started pulling ice, it was the week before.

Q. You are sure you talked to Mr. Willard then? A. Yes.

Q. And when do you say was the second time?

A. A day after they started the plant.

Q. A day after they started the plant?

A. Yes.

(Testimony of Herman Fruhn.)

Q. And he told you, "Not yet."

A. The first time he said, "Not yet." And the second time he said, "Not yet, you have to wait."

Q. Then how many days was it from then until Herman Smith put you on?

A. About three weeks.

Q. You had been laid off every summer, had you not, Mr. Fruhn, when the plant shuts down?

A. Yes,—not every summer. In the first three or four [463] years when I started working there, they never laid us off, put to work in the shop.

Q. For the last 10 years you have been laid off every summer?

A. In last six years they laid us off.

Q. You were off two or three months every fall?

A. One month to three months.

Q. And you worked for Reed Manchester, did you not, after you were laid off in July, 1941?

A. Yes.

Q. How long did you work for Reed Manchester?

A. I cannot remember how long I worked.

Trial Examiner Mouritsen: When you worked for Manchester, was that out at the plant? Did he do some work out at the plant, or was that some place else?

The Witness: That was in the store room.

Trial Examiner Mouritsen: Out at the plant, the Holtville Ice Company?

The Witness: Yes.

Q. (By Mr. Smith): You were paid by Manchester while you worked for him?



(Testimony of Herman Fruhn.)

A. Yes. [464]

Q. Herman Smith told you you could have the job in the store room if you wanted it?

A. Yes.

Q. You said the work was too hard for you and you didn't want it, and you quit?

A. I worked in the storeroom.

Q. You worked one day?

A. One night. [465]

Q. When they started up that fall, isn't it true that Mr. Stout was pulling ice? A. Yes.

Q. And he had previously been an engine operator, had he not, a Diesel operator?

A. Yes. [467]

#### Recross Examination

By Mr. Petersen:

Q. Mr. Fruhn, had you worked at the plant as long as Mr. Stout, or longer? A. Longer.

Q. You worked there longer than Mr. Stout?

A. Yes.

Q. You worked as a ice puller all the time?

A. Yes.

Q. Had you worked there longer than Mr. Harlan? A. Yes.

Q. Had you worked there longer than Mr. Hogue? [469] A. Yes.

Q. And you had worked there longer than Mr. Gettle? A. Yes.

Q. You had never done any other type of work there except— A. Ice pulling.

Q. —ice pulling? A. Yes. [470]